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AMERICAN BAR ASSOCIATION

SECTION OF LEGAL EDUCATION

1911 REPORT OF THE COMMITTEE ON STANDARD RULES FOR ADMISSION TO THE BAR

To the Members of the Section of Legal Education, American Bar Association:

Your committee has the honor to report as follows:

By virtue of the action of the Section your committee understands its functions to be the preparation of a draft for Standard Rules for Admission to the Bar,—rules which shall embrace all that should ordinarily be included within an adequate admission system, and which hereafter may serve as a general guide in jurisdictions in which changes in the rules now in force are being made or are in contemplation. Your committee does not understand that it is proposed either to refer the rules when finally approved to the Association's Committee on Uniform State Laws or in any other way to undertake a propaganda for their universal adoption in America.

Standard rules in so important a matter can be made of substantial value only through intrinsic merit. It follows that they should be drafted with the greatest care and only after the fullest possible consultation with those likely to have opinions and suggestions of value, that they may represent the consensus of the best professional judgment of our time.

We have been and are of opinion that the satisfactory completion of the task will more rapidly result if the main

points to be incorporated in the rules are first discussed as independent propositions until a substantially final agreement shall be reached with reference thereto, that in fact the fundamental principles can be better considered and debated in this form than if crystallized into concrete rules, for in a draft of the rules as a whole, a matter of prime importance may be embodied in a single clause and attract but little notice.

We also believe that ultimate progress in such a matter as this will be more rapid and of more substantial and lasting value if the principles to be incorporated in the proposed Standard Rules for Admission to the Bar are thoroughly understood, are fundamentally right and widely approved.

Accordingly at the 1909 meeting of the Association in Detroit, Michigan, we presented for your consideration a report embodying eighteen propositions, two of which (A and B *infra*), owing to the action taken by the Association in years past, we considered then and regard now as beyond the domain of present-day argument.

The eighteen propositions (the first two designated A and B, and the remainder numbered from I to XVI) are as follows, and are now submitted in the form last acted upon by the Section:

A. *Examinations for admission to the Bar should be conducted in each state by a board appointed by the highest Appellate Court.*

B. *A law diploma should not entitle the holder to admission to the Bar without examination by this Board.*

I. *The candidate shall on admission be a citizen of the United States.* (For discussion *in re* this proposition see pp. 6 to 11, *infra.*)

II. *He shall also be a citizen of the state in which he is applying for admission, or prove that it is his intention personally to maintain an office therein for the practice of the law.* (For discussion, see pp. 12 to 15, *infra.*)

III. *Character credentials on application for admission shall include the affidavits of three responsible citizens, two of*

whom shall be members of the Bar, and the affidavits shall set forth how long a time, when, and under what circumstances those making the same have known the candidate. (See p. 15.)

IV. *The lawyer on admission shall be designated attorney and counsellor, and not merely attorney.* (See p. 17.)

V. *Three years' practice in States having substantially equivalent requirements for admission to the Bar shall be sufficient in the case of lawyers from other jurisdictions applying for admission on grounds of comity.* (See p. 22.)

VI. *There is no necessity for the insertion in the rules of a reciprocal comity provision; that is, of a proviso prohibiting the admission of lawyers from other States on grounds of comity, unless the State from which the lawyer comes extends similar courtesies to lawyers from the Bar of the State in which the candidate is applying for admission.* (See p. 30.)

VII. *Students shall be officially registered at the commencement of their course of preparation for the Bar, upon report of the State Board as to fitness. The board's report shall be based upon its inspection of the candidate's credentials establishing that he has passed the required academic examination. The registration shall be with the clerk of the highest appellate Court. A candidate removing from a jurisdiction having similar standards for registration may have the registration transferred. Nunc pro tunc registration may be permitted according to the present New York practice, which allows such registration only when the candidate had the requisite education at the date as of which he desires to be registered, and in a case where there has been no laches on his part.* (See p. 31).

VIII. *No candidate shall be registered as a student at law until he shall have passed the entrance examination to the collegiate department of the State University of the candidate's State or of such college as may be approved by the State Board of Law Examiners, or an examination equivalent thereto conducted by authority of the State.* (See p. 34.)

IX. *Proof of moral character shall be required as a prerequisite to registration.* (See p. 37.)

X. *Student candidates for admission to the Bar, in order to be eligible for the examination for admission, shall have studied either in an approved law school or bona fide served a regular clerkship in the office of a practising attorney during the required period of preparation.* (See p. 38.)

XI. *No student candidate shall be eligible for admission to the Bar until he shall have devoted four years in preparing for call to the Bar, either by the service of a four years' clerkship in an approved law office or three full years in an approved law school, followed by one year of clerkship in an approved law office; provided, however, that the fourth year may be passed in an approved law school in post-graduate work, including procedure and practice.* (See p. 48.)

XII. *Candidates for admission shall present themselves prepared for examination in the following subjects: Constitutional law, including the constitutions of the United States and . . . . (the candidate's State), equity, the law of real and personal property, evidence, decedents' estates, landlord and tenant, mortgages, contracts, partnership, corporations, crimes, torts, agency, sales, negotiable instruments, domestic relations, common law pleading and practice, federal and State practice, conflict of law, professional ethics, the federal statutes relating to the judiciary and to bankruptcy, and the development in . . . . (the candidate's State) of the principles of the law, as exemplified by the decisions of its highest appellate Court and by statutory enactments.* (See p. 63.)

XIII. *Names of all candidates for admission should be published by the board for three days in succession, at least ten days before the examination, in a newspaper of general circulation throughout the State, and for four weeks in a law periodical, should there be one within the State jurisdiction. A similar publication should be made of the names of the candidates passed at the examination and at least ten days before the State Board's certificates are issued to the candidates.* (See p. 67.)

XIV. *From the examination fees received the members of the State Board shall receive such compensation as the highest*

appellate Court of the State may from time to time by order direct. (See p. 69.)

XV. *The fee for examination for admission shall be $25, and for passing up registration credentials in the matter of general education qualifications, $5.* (See p. 70.)

XVI. *The State Board shall consist of five members of the Bar, no one of whom shall receive student candidates in his office in preparation for call to the Bar, or be connected with the faculty or governing body of any law school presenting candidates for admission..* (See p. 72.)

In accordance with the instructions of the Section, your committee during the summer of 1910 caused a reprint to be made of its 1909 report, with annotations to the action of the Section at the 1909 meeting upon the sixteen fundamental propositions then submitted, and sent the same, *inter alia,* to every member of the American Bar Association, to the Chief Justices of the various states, to the members of all State Boards of Bar Examiners and to the deans of all American law schools, with requests for criticisms and suggestions.

We have been favored, although almost overwhelmed, by a volume of replies, many of which have proved most suggestive and of great value to your committee. These we have subdivided, classified and assembled under appropriate heads, and with a view to giving you the substance of the views received we now submit a selection of same, with other pertinent material, classified proposition by proposition, and in the belief that the discussion thus presented will prove peculiarly helpful to those studying the subject.

It has of course been impossible to print all the opinions received, but in every instance where marked opposition was expressed to a particular proposition we have embodied the writer's views in our report *totidem verbis.*

I

The candidate shall on admission be a citizen of the United States.

This proposition was submitted by the Committee in this form at the 1909 meeting of the Section, and, after debate, was so approved. In presenting it, your Committee at that time said:

"It has been suggested that provision should be made for the admission to the Bar of our Courts of the inhabitants of Porto Rico and the Philippines. Under the present law, they are not citizens of the United States, and yet, not being aliens, cannot be naturalized. *Query:* As a matter of principle, should or should not an American Court admit as a practitioner at its Bar one whom the people of the United States, through the legislative and judicial departments, have refused to recognize as a citizen of the United States?"

The proposition is, in the judgment of your Committee, one of fundamental importance and we accordingly, for convenience of reference, excerpt the following remarks from the 1909 debate thereon (the same will be found in full in volume XXXIV A. B. A. Reports, pp. 743-746):

"Hollis R. Bailey, of Massachusetts:

"In Massachusetts, for many years, we have not had that requirement. I think that as far back as 1854 a statute was passed allowing aliens who had filed their first papers to become members of the Bar, and we have worked under that statute ever since, and have admitted a good many men who had filed their first papers, but had not become naturalized citizens. We have now an application from a candidate who filed his first papers some fifteen years ago. He is eligible to be admitted under our statute. But, for a uniform law, I was glad in committee to vote in favor of the rule that a candidate must be a citizen of the United States on admission. I think that such a requirement is not too severe, and that on the whole the experience of our board in Massachusetts would lead its members to approve it.

"John H. Wigmore, of Illinois:

"An extremely harsh case of this particular kind has come to my notice lately, and I have had occasion to reflect upon it. I think that in the case of cities including from fifty to one hundred thousand Poles, Italians, Germans, and other foreign nationalities, we all realize

that there are great abuses under our law. For instance, in every Italian district the people do not go to our courts. They have padrones who do their entire law business. There is a king of Little Italy in Chicago who keeps them all out of the courts. One reason for this is that when you do not permit an adult alien to become a member of the Bar, you make those people obtain their legal advice from shysters who cannot get admitted, and who deprive them of the advice of good men who have not yet become citizens because of our rules; and while the theory of this is ennobling and particularly American, it seems to me it is nothing but a theory, and that we had better recognize cosmopolitan conditions, and for the sake of a theory not have have a rule which would prevent us in the next twenty years from doing a little more justice to our great foreign population.

"Ronald Scott Kellie, of Michigan:

"I think it a very strange thing that anyone who wishes to be admitted to the practice of law should object to becoming a citizen of the United States. It is such an absurdity that I should think a man who refuses American citizenship ought not to present himself for admission to the Bar.

"James Parker Hall, of Illinois:

"It takes quite a long time to become an American citizen, but if this proposition were amended so that a candidate who had taken out his first papers could be admitted, I think it would be all right.

"Ronald Scott Kellie, of Michigan:

"He can do that in tweny minutes after he lands.

"James Parker Hall, of Illinois:

"I think the point that Professor Wigmore makes is well taken. I think something less than five years ought to be required.

"Ronald Scott Kellie, of Michigan:

"We do not want any persons to become officers of our courts and administer justice unless they first become American citizens. If we have got to live here twenty-one years before we are entitled to the privileges of citizenship, I certainly protest against any foreigner exercising those privileeges until he shall have first become a citizen.

"James Parker Hall, of Illinois:

"Is not that largely a matter of sentiment?

"Franklin M. Danaher, of New York:

"If the gentleman will permit me to answer, I say that it is not a matter of sentiment at all. It is a matter of patriotism, and a national and political question. * * *

"A man should not be allowed to come to this country and become a member of our Bar without first swearing allegiance to our flag. * * *

"Alfred Hayes, Jr., of New York:

"Unless some cogent reason is presented why a member of the Bar should be a citizen, I shall vote against this rule in its entirety. If we admit teachers and professors from foreign universities, like Oxford and Cambridge, why have this rule? We have in the law school at Cornell University a very able man as librarian, who is not an American citizen. Unless there is some very good reason for this proposition, I shall vote against it.

Upon the vote being taken, the proposition was approved by the Section (34 A. B. A. Rep. 746).

In response to the request in 1910 for opinions, your Committee has received communications with specific reference to this proposition from members of the profession in thirty different states.

Over 70% of those replying favor the proposition in its present form; 24% additional also approve United States citizenship as a pre-requisite to admission, except that they would exempt Porto Ricans and Filipinos from the operation of the rule. Less than 6% are wholly opposed to citizenship as a pre-requisite to admission to the Bar.

Views of representatives of the latter group are forcefully expressed by a distinguished member of the N. Y. Bar, who writes:

"I object to this rule for the reason stated by Prof. Wigmore. I also object because it is churlish and inhospitable. When Thomas Addis Emmett came to this country he was admitted to practice before he became a citizen. The same is true in other cases of distinguished men who have come to the great Republic from a land of oppression? Why should we repel such men from our bar? We have from the beginning admitted them to the army. Lafayette, Pulaski, Kosciusko were not American citizens, but they held commissions in the Army of the United States. We have also from the beginning admitted citizens of other countries to professorships in our colleges. Shall the Bar be less hospitable than institutions of learning?"

A United States Judge in North Carolina states:

"I was interested in the debate on the requirement of citizenship. Some years ago the question came before our Court and was debated

with much learning and ability by Judge Gaston, Judge Ruffin, Alowell, the Attorney General, and Chief Justice Taylor,—*Ex parte* Thompson, 10 N. C. 355 (3 Great Am. Lawyers 60). The application for admission by persons not naturalized was rejected. It seems that in the case of Thomas Addis Emmett the New York Court held *contra.*"

The Dean of one of the best known American law schools says:

"I see no reason for excluding citizens of Porto Rico and the Philippines. England, I understand, admits citizens of other countries. This may be going too far because of the possibility of international complications should the lawyer be committed for contempt; but such an objection does not apply to the Porto Rican."

A member of the Bar in active practice in Washington, D. C., declares:

"It seems to me that within our possessions a qualified applicant should be admitted, if a Porto Rican or Filipino, because if they are not citizens, they certainly are not aliens. Indeed I understand one branch of Congress, if not both, at the last session passed a bill to admit the Porto Ricans to citizenship. But in any view, intelligent men, living in our insular possessions, who are not citizens of other nations, ought not to be barred from practising law because they are denied express citizenship under the United States. Such denial, it seems to me, would be the refinement of cruelty."

A well-known professor at the Yale Law School expresses himself thus on the point with reference to Filipinos and Porto Ricans:

"I think as a general rule that only citizens of the United States should be admitted to practice in our courts, and I cannot agree with the views of Prof. Wigmore as expressed at the Detroit meeting. I feel, however, that inhabitants of our dependencies ought in justice to be admitted, for they are as near to being citizens as they can be and in a broad—though not in a strict legal—sense, they are such."

The Chairman of the Examining Board for the State of Rhode Island feels compelled to approve the proposition as adopted by the Section, writing:

"Approved strictly on legal grounds. Ethically disapproved so far as the people of the insular possessions of the Philippines and Porto Rico are concerned."

It is suggested that in the last analysis, this Porto Rican and Filipino question would seem to resolve itself into an inquiry as to whether or not an American Court should admit as a practitioner at its Bar one whom the people of the United States, through the legislative and judicial departments of the government, have refused to recognize as a citizen of the United States.

A member of the New York Bar, while in accord with the rule as approved, recognizes the political aspect of the question and would have the naturalization laws changed to meet the situation, and in that respect makes a novel suggestion, worthy of careful consideration. He says:

> "The condition [requiring citizenship] should be absolute. It is my opinion, however, that the naturalization laws could be so amended as to admit without delay to citizenship and to the Bar, any alien who successfully passes the examination for admission to the Bar in a State of the Union. An alien who can, in any period of less than five years, sufficiently master our language and, by devoting his attention to that study which above all others will familiarize him with our institutions, fit himself successfully for the Bar, has thereby earned the boon of citizenship."

One of America's best known constitutional historians declares:

> "I approve the proposition as printed. Our present national situation as to citizenship in Porto Rico and the Philippines is an anomalous one, but may some day be corrected—as, *e. g.*, by admitting inhabitants of Porto Rico and giving to the Philippine inhabitants their independence."

Those present at the last meeting of the Section will recall the illuminating paper from the pen of Mr. Edward S. Cox-Sinclair, of London, barrister-at-law, Holt Historical Scholar in Gray's Inn, and a member of the Council of the International Law Association, upon *"Requirements for Admission to the Bar in Great Britain and Her Possessions and On the Continent of Europe—A General Survey."*

Concerning this proposition, approved by the Section in 1909, requiring citizenship as a pre-requisite to admission to the Bar, he declared (35 A. B. A. Rep. 824) (—the *italics* are ours):

"Every country which has been reviewed [England, Germany, Austria, Hungary, Spain, Italy, France and Belgium] has an analogous provision, save only England and Italy. It may be easy to assign historical reasons to account for the deviation from the standard of nationality in Italy; it is difficult to assign historical reasons for the case in England. *It is probable that if the matter were seriously raised in a substantial form in either country the admission of an alien would cease to be possible.* The presence or absence of an oath or declaration on admission would naturally follow the rule as to nationality. In the case of England, and in that of Italy, there is not even a declaration of fidelity to professional rules or regard for professional ethics."

In the United States, there is at the present time some diversity of practice.

The following States and territories require United States citizenship as a pre-requisite to admission: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, New York, Pennsylvania, South Carolina, Tennessee, Vermont, Washington, Wisconsin and Wyoming.

In the following states *either* United States citizenship *or* a declaration of intention of becoming a citizen is necessary: California, Idaho, Masschusetts, Ohio, Oklahoma, Oregon, Rhode Island and Utah.

The regulations in the remaining jurisdictions, as reported to us, are silent on the subject, but this does not necessarily imply that in practice an alien will be entitled to admission to the Bar therein without qualifying as to citizenship.

We trust that your committee may be favored with a further expression of views upon this subject.

II

He shall also be a citizen of the State in which he is applying for admission, or prove that it is his intention personally to maintain an office therein for the practice of the law.

This proposition was approved at the 1909 meeting of the Section, after the insertion of the word "personally." For the debate, see 34 A. B. A Rep. 746.

It will be observed that this provision would make it possible, for example, for a resident of New Jersey (or other state) located in a suburb of New York City outside the state of New York to be admitted to the New York Bar.

Of those replying to the committee's circular of inquiry sent out in 1910 more than 80% are in favor of the proposition as stated, and some would make it more stringent. As for example, a member of the Illinois Bar writes:

"This as amended I approve, but would suggest that the last clause should read, 'or prove that it is his intention personally to maintain a *permanent* office therein for the practice of the law.'"

A similar view has been received from Colorado:

"The form adopted meets with my approval. I believe, however, that the applicant should be required to make affidavit that he 'will commence the practice of law in this state within three months and will make the same his permanent and usual occupation.' The foregoing quotation is one from the Colorado rules, and experience leads me to believe that the adoption of some such rule is highly advisable."

The three following replies indicate that the use of the word "personally" results in some ambiguity:

(1) From a member of the Nebraska Board of Bar Examiners:

"Yes (I approve) as amended by 1909 meeting, but I favor construction that no attorney can 'personally' maintain more than one office."

(2) From a New York lawyer:

"In my opinion there should be added to the proposition as it was approved the words 'and not elsewhere' so that the proposition shall express unqualifiedly what was undoubtedly the intent of the Section. In other words, the applicant should not only be a citizen of the State intending personally to maintain an office within the State for the practice of law, but he should also not intend to practise in a second jurisdiction."

(3) From another member of the New York Bar:

"If it is the intent of this section to limit an attorney's practice to one jurisdiction, I should disapprove. If an attorney residing in New Jersey or Connecticut, with his principal office in New York City, chooses to take the examination for admission in the State of domicile for the purpose of practising there, I cannot see any good reasons why he should not be permitted to do so. It might be less difficult, for example, to practise law in the States of Massachusetts and Rhode Island, than in New York State and the Federal Courts."

The Dean of a law school in the District of Columbia disapproves of the proposition, writing:

"Disapproved. Either admission should be confined to *bona fide* residence, or left unrestricted. The only purpose of requiring *bona fide* residence was to prevent competition, as say between lawyers living in Manhattan with large offices and living expenses and those residing in the little villages of New Jersey. If there is to be any limitation of this kind it should confine admission to those who had been *bona fide* residents of the State for a period of not less than one year antecedently."

A professor at Yale states:

"In Connecticut we have admitted to the State Bar examinations men who have pursued their studies at the Yale Law School, and if successful, they have been admitted to the Bar, though not in all cases intending to practise here. I can see no objection to this. We cannot, of course, give them the right to practise in other states, but merely permit them to practise here if they choose to do so."

A professor at Harvard also writes in opposition to the rule as follows:

"This seems to me somewhat severe. Our cities are, many of them, small, and a man may not infrequently, I should suppose,

have occasion to be admitted to the Bar of a State where he did not intend to maintain an office."

On the other hand, a member of the Ohio Bar declares:

"I think the amended form in which the proposition was made is distinctly preferable to the original. There are certain collection firms that need control badly, in view of their abuse of the evident intent of the bankruptcy act, and it is important that where attorneys are connected with such firms, they should be amenable to all the regulations possible in a given locality. Therefore it would seem to be necessary that in order to become members of the Bar of a State, they should prove their intention *personally* to maintain an office therein for practice of law."

The views on this proposition of Mr. Edward S. Cox-Sinclair, author of the paper read at the 1910 meeting of the Section on "Requirements for Admission to the Bar in Great Britain and Her Possessions and On the Continent of Europe—A General Survey," are of particular interest. He says (35 A. B. A. Rep. 824) (—the *italics* are ours):

"An analogous rule exists in regard to the Bars in almost every country under review [England, Germany, Austria, Hungary, Spain, Italy, France and Belgium], domicile in the district in which the particular order of advocates has jurisdiction being substituted for citizenship and practice in the states. England affords no comparison, because there are no orders of advocates except the four Inns of Court, which are located in the vicinity of the High Court, and each of these bodies calls to its Bar its members, *granting them the power of practising where they will, in any of the Courts of the realm, and in any place in the kingdom.*"

The subject covered by this second proposition is to be discussed in at least two of the papers at the forthcoming 1911 meeting of the Section and will, therefore, not be further elaborated here. It is well for us to remember in considering it, that in some states where admission matters are still under the control of County Courts, Chinese walls remain in evidence, admission to the Bar of one County not permitting practice in another within the same state, except upon grounds of comity *pro hac vice,* and frequently not even in this way unless a member of the local Bar is taken into the case; also that some County Courts, as the result of the attitude of the

local Bar, decline to admit a candidate from another County within the same state unless it is his intention to open and permanently to maintain his *principal* office in the County in which he is applying for admission.

III

Character credentials on application for admission shall include the affidavits of three responsible citizens, two of whom shall be members of the Bar, and the affidavits shall set forth how long a time, when, and under what circumstances those making the same have known the candidate.

This proposition was approved at the 1909 meeting of the Section after a requirement of affidavits was substituted for certificates upon suggestion of Secretary Danaher of the New York State Board of Law Examiners (34 A. B. A. Rep. 747).

The replies, in response to your committee's request in 1910 for opinions, indicate this proposition to be almost unanimously approved except that several consider that a requirement of certificates rather than affidavits would be preferable, on the ground that it was best not to multiply oaths.

On this point, a leading member of the New York Bar writes:

> "It seems to me that the change recommended by Judge Danaher was unfortunate, and that the rule in its original form was preferable. All experience shows that the more you multiply affidavits, the more you lessen the solemnity of the oath. Any man who is 'responsible' will give a certificate with as much care as he will make an affidavit."

So also the Chief Justice of one of our Western states expresses himself as follows:

> "The third proposition I would approve in its original form, so that it shall provide for certificates instead of affidavits. At least, a certificate from a member of the Bar should be sufficient without requiring that it be put in the form of an affidavit."

On the other hand, a member of the profession residing in New Hampshire, whose opinion is entitled to great weight, declares:

"Proposition seems satisfactory. Whether 1909 amendment is preferable you can fairly consider; but the 'affidavit' of a dishonest member of the Bar should be more trustworthy than his certificate."

In submitting this proposition to the Section in 1909, your committee stated in its report:

"It has been suggested that it may be a hardship for a candidate to secure certificates from *two* members of the Bar. *Query:* Will not such provision make it incumbent upon a student during his course of preparation to be in touch with at least two members of the Bar?"

With reference to this point, one of the best-known members of the Harvard faculty states:

"It seems to me a somewhat unnecessary hardship to make it incumbent upon a student during his course of preparation to be in touch with at least two members of the Bar."

So also a member of the Bar of Colorado writes:

"I believe the certificate of one member of the Bar is sufficient and that requiring a student to keep in touch with two members of the Bar will in many cases work a hardship without a corresponding benefit."

Likewise the Dean of a Western college declares:

"Proposition or rule III does not, in its present form at least, meet with my approval. First, it may be difficult, however good his character, for the student to obtain *affidavits* from two members of the Bar. I can easily conceive of the high school graduate who, during his high school course, has not been acquainted with a member of the Bar and who, during his law course immediately following, has not had the opportunity of becoming acquainted with a member of the Bar, unless one of his law instructors is also a member of the Bar. The suggestions following this proposition that it would make it incumbent upon the student during his course of preparation to be in touch with at least two members of the Bar is hardly satisfactory. This is a temptation to assume a character and the value of an affidavit as proof of real character might well be doubted. Second, the proposition takes no account of the knowledge of the character of the student which the dean or law school faculty may have; a certificate, not an affidavit from such dean or faculty should, if not in itself sufficient, be a substitute for at least two of the affidavits for which the rule provides."

On the other hand, a former president of the Connecticut Bar Association and a professor in the Yale Law School, states:

"If I remember rightly, the New Haven County Bar required certificates as to moral character from two members of the Bar of the county before the rules required this. I do not think this has ever worked hardship, and I think it should be required."

Similar views are expressed by the Dean of one of the law schools in the District of Columbia, who would make the requirement even more stringent. He writes:

"Approved, with the suggestion that the two members of the Bar giving the certificates should be personally known to the examining committee as men of high standing and clean practice."

And the chairman of the Rhode Island Board of Bar Examiners thus declares himself:

"Approved. Any feature so important to the public, the Bar and the Courts as possession of character by a lawyer, should be fundamentally among the controlling qualifications for admission to the Bar."

IV

The lawyer on admission shall be designated attorney and counsellor, and not merely attorney.

This point was disapproved at the 1909 meeting of the Section. For the debate see 34 A. B. A. Rep. 747-750. The range of the discussion was such that it may be doubted if the vote was squarely on the proposition as printed; however this may be, the question was debated as to whether or not it would be well to have in America such a distinction as, for example, has existed in England from time immemorial between the barrister and solicitor, or in New Jersey between attorneys and counsellors, where the candidate in the first instance is admitted only *as an attorney*, after the service of a three years' clerkship in an office and the passing of his Bar examination, and only subsequently is admitted *as a counsellor* after spending a novitiate of three additional years in practice before the lower Courts, and passing a further Bar examination.

It was not the intention of your committee to raise this question, but merely to suggest that it would be well for the standard rules to provide that the candidate on admission should be entitled to use the full title "attorney and counsellor." It may well be doubted if standard rules for the Bar would be the most appropriate place in which to initiate so great and fundamental a reform, if such it be, in the constitution of our profession. In the judgment of your committee such a draft for rules, as is now in course of preparation, if it is to be of substantial service in those jurisdictions where changes in the rules are in contemplation, should represent only the consensus of the best professional opinion and practice *at this time*, and not attempt to go further in the way of reform. However, the debate on Proposition IV was opened so interestingly by Professor Kales, that we quote therefrom as follows (34 A. B. A. Rep. 747-748):

"Albert M. Kales, of Illinois:

"The proposition as stated seems to touch a vital difficulty in this question of requirements for admission to the Bar. I have noticed to-day a constant tendency towards higher requirements on the one hand, and also a tendency in the opposite direction. It seems to me that when you examine the necessary divisions of practice at the Bar, you will find that there is one standard of requirement for one kind of practice, and a more difficult standard for another kind. In other words, as long as a member of the Bar is an attorney in the ancient sense of that word, a man who seldom if ever handles litigated problems in the Courts, he may have a much more meager legal education than a man towards whom you look to conduct the great litigated problems of a large and important community. It seems to me, therefore, that this rule binds the American Bar Association to the general levelling proposition that there shall be no difference whatever between men who are mere practitioners at the Bar and those who practice as advocates.

"While it is not possible to do anything finally in the formulation of these rules to-day, this suggestion should receive some consideration, and admission to the Bar as an attorney merely might well be had upon a lesser legal requirement than the subsequent admission as counsellor at law; and I would vote against this rule on the ground that a possible distinction along this line should be worked out.

"Ronald Scott Kellie, of Michigan:

"I would like a little information from the Chairman of the Committee. Is his idea that the certificate granted to the applicant shall indicate that, by merely calling him 'attorney and counsellor'?

"Lucien Hugh Alexander, of Pennsylvania:

"The thought of the committee is that the certificate of admission should set forth that the candidate is admitted as an attorney and counsellor; in fact, that there ought not to be any distinction at the Bar in America between an 'attorney' and 'counsellor'."

The balance of the debate (*Id.*, pp. 748-750) was taken up mainly with a discussion, as to whether or not a lawyer on admission should have the titles "solicitor and counsellor in chancery," "proctor in admiralty," etc., and will not be reproduced here.

The replies to the Committee's circular of inquiry sent out in 1910 seem to indicate that the use of the title "attorney and counsellor" has the approval of a majority of those replying; however, the scope of the 1909 debate in the Section may have caused some confusion in the minds of the writers as to the precise point to be approved or disapproved, and it is not entirely clear from the replies what the consensus of opinion is on this subject, but the latter is in no sense one of vital importance.

The Chief Justice of one of the Western states expresses himself upon the proposition as follows:

"This should have been adopted. The distinction between attorneys and counsellors has been disregarded by the legislatures of all the Rocky Mountain and Pacific States, in prescribing the qualifications for admission to the Bar, and has fallen into disuse in most of the states in the Union, especially those in which the distinctions in form of procedure have been abolished. I do not think that anyone should be declared qualified to exercise the office of either attorney or counsellor until he possesses the qualifications necessary for both."

One of the ablest members of the New York Bar writes:

"I wish we could restore the distinction between attorneys and counsellors. Half the lawyers at the Bar of New York City rarely try cases and do not know how. They may be good business men. But if they are to be licensed as competent to try cases, I submit that previous experience as an attorney in the preparation of cases for trial should be required."

Another member of the profession in New York asserts:

"There is no one thing which in my opinion would more tend to better professional standards than the separation of the business

of solicitors from the professional acts of barristers. The high standing of the English Bar is undoubtedly very largely due to that separation. I think the tendencies should be rather for separating the two branches than toward uniting them."

To the same effect is the following from another member of the New York Bar, who would favor a movement toward the New Jersey system:

"I think the standard of the profession will be materially raised if an applicant is required to follow his calling as an attorney for some stated period before he is admitted to the rank of counsellor. A serious difficulty in maintaining the standards of the Bar is that little opportunity is afforded to discover the moral worth of an applicant for admission, until after he becomes a fullfledged member of the Bar. It seems to me that if a course of two or three years' practice as attorney should be a pre-requisite to the higher rank as counsellor, failure to appreciate moral or ethical standards would manifest itself and the committee on character, called upon to consider the attorney's application for admission to the rank of counsellor, would be in a better position to act intelligently upon the application."

On the other hand, another New York lawyer declares:

"The designation 'attorney and counsellor' is probably as good as any. The tendency in this country to differentiate between the two, as is done in England and New Jersey, should be opposed; since any movement to make of the profession a 'closed shop' seems highly undesirable, opposed alike to efficiency and scholarship. A candidate does not object to high standards for admission, but he does desire, when the long period of preparation is completed, to be admitted to the whole estate. I think it would be desirable to provide an exceedingly rigid examination in all proper subjects for those who aspire to the bench; it would be some gain, at least, to limit the district leader's nominations to men of character and learning."

The views on this point of Mr. Edward S. Cox-Sinclair, of London, author of the paper read at the 1910 meeting of the Section on *"Requirements for Admission to the Bar in Great Britain and Her Possessions and on the Continent of Europe—A General Survey,"* are of peculiar interest in this connection. He states (35 A. B. A. Rep. 825-826):

"In Europe the practice differs widely but two main groups of practice are apparent. In England (where the attorney is becoming powerful as compared with the advocate), in France (where the

avocat is becoming powerful as compared with the *avoue*), in Spain (where the branches appear to maintain their relative strengths), and in Italy (where the branches tend to coalesce by reason of the likeness in the training and facility of exchange), in all these, and in allied systems, there is a complete separation in the functions of the two classes of lawyers. On the other hand in Germany, in Austro-Hungary and in Belgium, and equally in the colonies and dependencies of Great Britain, there is a fusion between the two branches of the profession, which, except in the case of special jurisdictions, seems complete. On the whole it would appear that there is a tendency towards fusion which, to a certain extent will tend to diminish the academic, and to increase the practical, aspect of training."

The following views have been received from a member of the profession in the State of Washington on the subject of the lawyer's title in America:

"I think the lawyer, on admission to the Bar, should have some distinguishing appellation, authorized by law, and it appears to me that 'Attorney' or 'Attorney and Counsellor,' which has become generally accepted and is generally used, is as honorable and acceptable as any, and therefore, in my humble opinion, this proposition should have been approved, or at least a suggestion made, of some more fitting appellation, being adopted instead."

One of the best-known members of the Connecticut Bar expresses himself as follows:

"It seems to me the debate before the American Bar Association shows that the rule should not designate the title to be given to the candidate on admission, but should rather specify the rights to which he is admitted, leaving the title to be regulated by the practice in each state. It would meet my idea to have the rule worded as follows: 'Lawyers on admission shall be entitled to enter on all branches of the practice of the legal profession; there shall be no distinction between the rights exercised in England by the attorneys or solicitors and those exercised by the Barristers.' This may not be very happily worded, but you will get my idea."

While the question of the lawyer's title is not one of supreme importance, nevertheless, as it is usual to embody the same in the admission certificate, the committee hope that they may be aided by a further expression of opinion upon this subject in order that the standard rules, when finally drafted, may beyond peradventure represent the general consensus of opinion.

V

Three years' practice in States having substantially equivalent requirements for admission to the Bar shall be sufficient in the case of lawyers from other jurisdictions applying for admission on grounds of comity.

This proposition was approved at the 1909 meeting of the Section (34 A. B. A. Rep. 750).

While the majority of the replies received to our 1910 request for criticisms indicate widespread approval of the proposition in this form, nevertheless some very seriously raise the question as to whether three years' practice in another state is a sufficient period to warrant admission on grounds of comity. The importance of increasing the period to at least five years has been very earnestly pressed upon the attention of your committee. There is at present much diversity of practice throughout the country. From the information before us, we find that for admission on grounds of comity Rhode Island requires *ten* years' practice in the state from which the candidate comes, and Arizona *six* years.

The following states require *five* years' practice: Colorado, Illinois, Maryland, Minnesota, Nebraska, New York, Ohio, Pennsylvania, South Dakota and Tennessee.

The following *three* years: Connecticut, Massachusetts, Missouri, New Mexico, North Dakota and Virginia.

Wisconsin requires *two* years, and the following states *one* year: Iowa, New Hampshire, Oklahoma and Vermont.

The remaining states, from our latest information, do not seem to demand any particular period of practice in the state from which the applicant comes.

We have received but two objections to proposition V as too stringent, one of the best-known members of the Bar of Colorado writing as follows:

"I do not favor Proposition V. The rules of the Colorado Supreme Court require five years' practice in other States as a condition for admission on grounds of comity. As an illustration of how this rule might operate, let us suppose that Justice ——— of the Supreme Court

of ——— should migrate to Colorado and desire and apply for admission to practice. He went upon the District and from there to the Supreme Bench before he had practised for three years. He is admittedly one of the best judges in the country. Yet to secure admission in Colorado he would be obliged to submit to the same examination provided for the law student. I think if a man has been admitted after examination under the rules existing in the State of his residence, he should be admitted without further examination in the other jurisdictions of the country."

So also the Chief Justice of another Rocky Mountain state declares:

"I believe that the requirement of three years' practice in other states is unnecessarily long. Most of the states have or will have reasonably stringent regulations for admission upon examination, and I am of the opinion that the required period of practice in the state where the candidate was originally admitted upon examination should be so long only as will establish that the candidate was admitted in the other state and entered into practice therein in good faith, and not for the purpose of evading any of the rules governing the admission of lawyers in any other state where he might subsequently apply."

Contra to this view there have been a number of earnest expressions of opinion from members of the profession urging that a longer period than three years should be incorporated in the standard rules.

The Secretary of the Minnesota State Board of Bar Examiners writes:

"Our Supreme Court has fixed the period at five years, and I think that short enough."

The Chairman of the Rhode Island Board of Bar Examiners asserts:

"My opinion is that the requirement for admission to the Bar on the ground of comity should be, in any event, at least five years' practice, the candidate to furnish satisfactory evidences of character and standing at the Bar of the State in which he has practised."

The editor of the *Central Law Journal* declares:

"Some experience in Missouri and adjoining states has suggested that something more than three years' practice be required from non-

resident practitioners applying for admission. For instance, five years would be better, it would discourage the evasion of the rules by students impatient of the strict rules of some particular state. I suggest also that unless the educational standard of the state from which the applicant comes is as high as provided in Section VIII, this requirement should be insisted on. In other words, no evasion should be permitted, on grounds of comity, of the most important and essential qualifications of an attorney."

Another Missouri lawyer asserts:

"This state, and I believe other states, have always suffered and many of them are still suffering from too lax regulations concerning men who have practised in other states and who come to practise at our Bar. We have today men practising at our Bar who could not pass our examination either from the mental or moral standard of the men. I believe that, excepting cases where the non-resident lawyer is associated with local counsel, that no non-resident should be allowed to practise in the state unless he has passed the same examination as the resident attorney is compelled to pass."

Somewhat similar views are expressed by a Judge in the State of Washington, who says:

"I assume that this applies to lawyers seeking admission under Proposition V as well as to student applicants. Upon that assumption I wish to suggest that very strict requirements be made as to the past life and present standing of the applicant at the Bar of the State from which he comes. Such applicant should be required to produce a certificate of good standing in the Courts of the state from which he comes, in addition to proof of his good moral character.

"My reason for the suggestion is that in this broad land of ours it is easy for a lawyer who has committed some act, which renders him unable to practise law, to leave that State and go to some distant State and be admitted to practise there, upon the production of his certificate of admission, which may be hoary with age, and the affidavits of two or more persons (all too easily obtained) of his good moral character. It has been reported to me that a former practitioner in this State, after conviction and serving sentence for the crime of obtaining money under false pretenses, went to California and is there engaging in the practice. Another case has been reported of a lawyer, convicted of forgery, who, after he had served his term in the penitentiary, has gone somewhere—and who knows but he is practising law there? Another case of a lawyer charged in a central State with a felony, but who escaped conviction on a technicality, came to this State and engaged in the practice. It requires but little reflection to satisfy anyone that under the laxity of lawyers and judges in the matter of admission (and par-

ticularly so with reference to the admission of lawyers from sister states) such examples as above stated, might easily be duplicated daily."

A member of your committee calls attention to a strikingly similar set of circumstances, which serves to emphasize that even the certificate of an Appellate Judge of recent date is not always enough to protect the new state to which the applicant of questionable reputation immigrates. The facts are as follows:

A member of the Bar in one of our American states, following a prosecution by a committee of the Bar, was disbarred for dishonest professional conduct after a full and complete hearing. Thereupon, through able counsel, he appealed to the highest Appellate Court of the state, which, after an elaborate argument upon the record, sustained the disbarment. The man then removed to another state but through his counsel applied to a Judge of the Appellate Court which had sustained his disbarment, for a certificate of good moral character and professional standing. This the Judge gave, perhaps on the casuistical theory that he had only been disbarred from the Bar of the lower Court, and that in consequence he was entitled as of right to a certificate of good moral character and professional standing from a Judge of any Court of whose Bar he still happened to be a member. In the state referred to, disbarment from the Bar of the lower Court did not *ipso facto* disbar from the Appellate Court, and it seems that the Bar Committee had neglected to move the man's disbarment there, and the Appellate Court had not acted on its own motion. On this certificate, which was then of recent date, the disbarred man applied for admission in another state, but his character there happened to be known, and a copy of the record of disbarment was sent for with the result that his application was denied.

A member of the Committee on Discipline of the New York County Lawyers' Association, who is also a member of the Executive Committee of the Bar Association of the City of New York, disapproves of proposition V on the ground that the period should be five years and not three. He writes:

"Disapproved. I am a member of the Committee on Discipline of the New York County Lawyers Association; and the result of my observation there, as well as on the Executive Committee of the City Association, has been that a large majority of the cases of moral obloquy on the part of practitioners has been found among those who have been admitted on grounds of comity toward other states. I think that three years' standing at the Bar of another jurisdiction is too short a time for a young lawyer to establish himself sufficiently to permit his admission in another state. I would suggest that the period be five years at least."

This matter, during the last year or two, has received most careful consideration in the State of New York and the highest Appellate Court in that State has adopted revised rules of admission effective 1 July, 1911, *inter alia,* raising the length of practice in the state from which the applicant comes entitling him to admission in New York on grounds of comity, from three to five years; and changing the previous requirement that a lawyer from another state could be admitted to the examination for admission if he had practised for one year therein, and now requiring him, in order to be entitled even to enter the examination, to have practised three years in the state from which he comes.

The New York Court of Appeals which has now given to New York the most thorough and complete admission rules in the United States, was aided in its deliberations not only by the Board of Bar Examiners and the various law school authorities of the State, but, *inter alia,* by two able committees representing respectively the Bar Association of the City of New York and the New York County Lawyers' Association, both of which submitted elaborate memorandums to the Court on this and other propositions.

A committee of seventeen, of which Mr. John R. Dos Passos was chairman, represented the New York County Lawyers' Association in the matter with reference to the subject covered by our proposition V. This committee said:

"Rule II of this Court provides that applicants for admission to the Bar of this state from other states shall receive a license to practise upon the mere production of a certificate stating that they had been admitted to practise and had practised three years as an attorney and counsellor in the highest Court of law in another State.

"Until very recently they were not even required to show good character.

"Attention having been called to the fact that many persons of indifferent moral character and standing were being admitted, the Appellate Division of the First Department in July, 1909, adopted a rule requiring such applicants to be approved as to character and qualifications by the Committee on Character.

"We now respectfully apply for a complete abrogation of Rule II of this Court so that lawyers from other States hereafter seeking to practise in the Courts of this State shall be subject to the same period and course of study as our own citizen-students.

"Under the Rule in question, many individuals have been admitted to our Bar absolutely destitute of the necessary qualifications and character to fit them to practise law in this State. For obvious reasons, details cannot be spread upon the record; suffice it that in analyzing the causes which have led to the lowering of the general standard of the Bar much may be justly ascribed to the fact that individuals in large numbers without social or professional position in their own States have availed themselves of this enticing opportunity. Migrating into this State in large numbers, they have been made full-fledged New York lawyers by simply producing a certificate provided for by Rule II.

"In the early days when this Rule was first adopted, few availed themselves of the privilege. So far as we can discover, it was adopted by this Court originally as an act of pure courtesy to enable a few distinguished lawyers from other States, whose high reputation caused them to be retained all over the Union, to practise here, but the rule has been used for purposes far beyond its spirit and intention as we have shown. It is now taken advantage of not by the few for whom it was made, but by the many who were never intended to come within its scope. As now used the rule in question unreasonably discriminates against our own student-citizens. In the case of foreign attorneys no investigation as to the knowledge of the applicants of New York law is required." * * *

"One thing is certain, that it is not a prerequisite that a lawyer from another State should have any knowledge of the laws or practice of this State, but he is allowed to enter promiscuously into the profession and to hold himself out as possessing sufficient legal knowledge, skill and training to represent clients here, and he is awarded a certificate under the seal of a Supreme Court of this State which is an official declaration that the person holding it is learned in the law and qualified to give legal advice to all those who employ him—when as a matter of fact, nothing is known of his qualifications to practise law here.

"The laws of the State of New York are, it may be said, *sui generis* in these particulars: that they consist of a large body of statutes with voluminous civil and criminal codes which require years of earnest

study even to comprehend, and a lifetime to master. To speak within the bounds of reasonable criticism, it is unfair to the public to grant certificates to persons who have undergone no examination. No rule of State comity requires us to admit persons to practise law in this State who have not previously demonstrated some knowledge of its laws.

"A lawyer who has passed no examination should not receive the certificate of our Supreme Court entitling him to proclaim by official fiat, that he is worthy of the confidence of the community.

"Courtesy to the members of the profession of other States only requires that in isolated instances they shall be heard in our Courts. This privilege is invariably granted by our Courts. It has, however, been flatly refused to New York lawyers in at least one neighboring State, and a rather peremptory notice given from the Bench by one of its Chancellors that the practice of New York lawyers appearing before its Courts was not looked upon with favor and should be discouraged.

"It is vain to attempt to maintain a high moral and intellectual standard or a proper *esprit de corps* in our profession as long as this rule opens the door indiscriminately to those who neither know anything of our statutes, procedure and forms of laws nor of customs or professional traditions.

"The profession has, as we are informed, never brought the attention of this Court to the evils which flow from the existence of this rule. It has simply been tolerated by the Bar as a whole, while it has been deprecated by the few who have given some attention to the subject. * * *

"Courtesy ends to the Bar of foreign States when we permit them to act as counsel in occasional instances. Nor would the evil be extinguished by limiting the privilege to lawyers who have been in active practice for five years. An individual applying for admission to the Bar should be willing to show that he has a knowledge of our laws and practice."

Dean George W. Kirchwey of the Columbia Law School, and a member of Mr. Dos Passos' Committee, was not wholly in accord with the majority view expressed in the memorandum, and, while conceding that the period should be five years, advocated modifications as follows:

"As to the third amendment proposed, I doubt whether it is wise or compatible with the courtesy which the Bar of our State owes to the members of the profession in a sister State to require the latter, as a condition of practising in New York, to pass the examination prescribed for our own novices. At the same time the evil on which your memorandum expatiates does exist. Would the condi-

tion not be met in a satisfactory manner by the adoption of the amendment proposed by the Judges of the Appellate Division in the memorandum recently submitted by them to the Court of Appeals restricting the privilege of admission on motion to lawyers who have been in active practice in another State for a period of not less than *five* years? I would suggest as a further safeguard that all such candidates be required to present themselves, and the evidence on which they base their claim to admission to our Bar, to the proposed Committee on Admission to the Bar.

This recommendation embodies substantially what the Court of Appeals incorporated in the rules effective 1 July, 1911. These rules may be had in pamphlet form on application to Hon. Franklin M. Danaher, Secretary Board of Bar Examiners, 86 State Street, Albany, N. Y.

In this matter, the Bar Association of the City of New York was represented by a committee of three, of which Hon. Francis Lynde Stetson, the president of the Association, was the chairman. This committee, after devoting much study to the subject, embodied their recommendations to the Court in the following form:

"The Justices of each Appellate Division in exceptional cases where lawyers from another State having substantially equivalent requirements for admission to the Bar of this State, first being satisfied by proper examination of the character of the applicant, may admit to practice in this State any person who shall have practised for five years consecutively as attorney and counsellor in the highest court of law in such other State; such applicant having first given notice of his intention to apply for admission in a newspaper regularly designated for publishing legal notices for the Department in which such application shall be made, or if there be no official paper then in the official legal journal in the City of New York."

VI

There is no necessity for the insertion in the rules of a reciprocal comity provision; that is, of a proviso prohibiting the admission of lawyers from other States on grounds of comity, unless the State from which the lawyer comes extends similar courtesies to lawyers from the Bar of the State in which the candidate is applying for admission.

This negative proposition was approved at the 1909 meeting of the Section (34 A. B. A. Rep. 750).

Fully 90% of the replies to our 1910 circular of inquiry with reference to this point are in this form: "In favor of the proposition," "Unobjectionable," "I heartily agree," "Yes," "I approve of this," "Yes, there is necessity for this," "Good and should be adopted," "Admirable," etc., etc.

In view of the fact that a number of states have a reciprocity provision upon this subject incorporated in their rules, your committee is in some doubt as to whether the Bar generally considers there should be such a provision in rules of admission. We will accordingly be glad to have a further expression of view upon this point. One member of the profession in New York expresses himself emphatically, stating:

"I think there is a necessity, and that the comity should be limited to those States extending similar courtesies."

VII

Students shall be officially registered at the commencement of their course of preparation for the Bar, upon report of the State Board as to fitness. The board's report shall be based upon its inspection of the candidate's credentials establishing that he has passed the required academic examination. The registration shall be with the clerk of the highest appellate Court. A candidate removing from a jurisdiction having similar standards for registration may have the registration transferred. *Nunc pro tunc* registration may be permitted according to the present New York practice, which allows such registration only when the candidate had the requisite education at the date as of which he desires to be registered, and in a case where there has been no *laches* on his part.

At the 1909 meeting of the Section, this proposition was approved as printed. For the debate see 34 A. B. A. Rep. 750-753.

The replies to the committee's 1910 circular of inquiry are overwhelmingly in favor of the proposition, except that some law school authorities express the fear that the proposition might work a hardship in some cases.

Your committee's report in 1909 stated:

"Registration of students of law has been required in Pennsylvania for many years and the system has worked admirably."

There has also long been a similar system in New York State and during more recent years in Connecticut, and good results are said to have been accomplished.

On this subject, Mr. Edward S. Cox-Sinclair, of London, in his paper in 1910 before the Section on "Requirements for Admission to the Bar in Great Britain and Her Possessions, and On the Continent of Europe—A General Survey" (35 A. B. A. Rep. 809-828), states:

"The Official Registration of Students at the Commencement of their Course of Preparation for the Bar.—It will be observed that this

exists in its highest form in England where admission to an Inn of Court and the closest associations with it during at least three years is, and always has been, an essential. It exists also in France and Belgium, the system of the *'colonnes'* in the former case, and the *'stage'* in the latter case affording a stringent registration, and a continuous supervision, only less than in England. In a far less degree it seems (if at all) to exist in Spain, in Germany and in Italy."

The secretary of the Minnesota Board of Bar Examiners writes:

"We have no registration of students in this state, but think there should be."

On the other hand, a well-known professor at Harvard declares:

"I think the requirement of registration is likely to work serious harm and injustice to students at law schools like ours. Nearly three-fourths of our membership of 765 come from other states than Massachusetts (including every state but two in the Union). It often happens, naturally and properly, that these men are quite uncertain until late in their course where they will settle, and consequently are not in a position to register anywhere; and the faculty are clearly of opinion that it is a good thing to maintain easy means of accommodating supply to demand by sending graduates to any state where there is a good opening *at the time of graduation.* In other words, registration, while it may work well for men who prepare in law offices or schools of a strictly local kind, is very different for schools of a national character. Why should not entering such a school (or indeed any regular law school) take the place of registration for any state?"

Another Harvard professor says:

"I am not in favor of this. At the Harvard Law School a large number of the graduating class have not decided where to practise. An excellent opportunity in any portion of the United States will induce such men to accept it. I receive from widely scattered parts of the United States inquiries from established lawyers for promising graduates and in this way maintain a kind of intelligence office. This practice I regard as desirable from every point of view, but it would be interfered with by any requirement of preliminary registration, unless a student were allowed to register originally in a State, in spite of his knowledge that very probably he would not practise there, and was also allowed to transfer such registration, at will, elsewhere. If he were allowed to do this, registration seems a mere farce. I do not wish to be understood as objecting to satisfactory academic training

for applicants, but I see no reason why a candidate should be compelled to submit to inquiry as to this prior to his course of legal studies."

This last criticism is perhaps answered by the decision of the New York Court of Appeals in Moore's Application (108 N. Y. 280) upon an application to permit proof of general educational acquirements to be presented subsequent to the commencement of the candidate's legal education. The Court, *inter alia,* said:

"This rule was adopted by the Court in 1882, has been extensively published in the rules and otherwise since, and has, from the time of its adoption, been uniformly enforced in the examination of students throughout the State.

"There would seem to be no valid reason why a person called upon to determine the to him important question of selecting an avocation for life should not have made himself familiar with the conditions imposed by law upon the privilege of pursuing such avocation. Notwithstanding this fact, it is apparent that many students have heedlessly remained in ignorance of the rule until their period of study had nearly or quite expired, and have then come to this Court with applications to be exempted from its operation. The object of this rule can be attained only by its uniform and strict enforcement. It was clearly its intention, by requiring certain intellectual qualifications on the part of students when commencing their course of legal studies, to insure, as far as possible, the attainment of the ability required when finally licensed by the Court to perform the responsible and important duty of advising clients as to their legal rights and duties. * * *

"Here the object of the rule was to require at the commencement of the clerkship certain specified proof of the student's qualifications. This proof cannot be allowed to be subsequently supplied without defeating its object and practically annulling its provisions. * * *

"The application should be denied. All concur. Application denied."

(Accord: Matter of Mason, 140 N. Y. 658; Matter of McLeer, 151 N. Y. 663; Matter of Klein, 155 N. Y. 696.)

The present *nunc pro tunc* registration provision of the New York Court of Appeals is covered by its rule IX:

"When the filing of a certificate, as required by these rules, has been omitted by excusable mistake, or without fault, the Court may order such filing as of the proper date"

A member of the profession in Minnesota suggests somewhat similar objections to those raised by members of the Harvard faculty. He says:

"My suggestions as to proposition VII would be that there ought to be a provision so that a student in one state might cover a part of the time there and be subsequently registered in another state."

So also another lawyer, writing from the state of Washington, declares:

"While I approve of this as a general principle, still I think some amendment should be made to cover the case of a man who has no particular ties at any one place and while studying law in a law school has not made up his mind as to where he shall practise."

The committee suggests that objections of this character are answered by the provision of proposition VII referred to in the following statement from a member of the Bar in New York:

"Especial approval of the following provision of this proposition: *'A candidate removing from a jurisdiction having similar standards for registration may have the registration transferred.'* Standard rules designed for all the States should above all be flexible in matters of this nature, to avoid injustice and loss of time where the candidate removes from one jurisdiction to another."

VIII

No candidate shall be registered as a student at law until he shall have passed the entrance examination to the collegiate department of the State University of the candidate's State or of such college as may be approved by the State Board of Law Examiners, or an examination equivalent thereto conducted by authority of the State.

This proposition was approved by the Section at the 1909 meeting after some amendment thereof. For the debate thereon, which is too long to reproduce here, see 34 A. B. A. Rep. 753-757.

In submitting this proposition to the Section in 1909, we stated:

"Within some States the high school standard varies so greatly that it seems unwise to specify graduation from a high school as adequate academic preparation; on the other hand, it is not unreasonable to require that the candidate on taking up the study of the law shall have passed *at least* the examination demanded for entrance to the State University or its equivalent."

The responses to our 1910 request for criticisms indicate that the proposition in its present form probably represents as far as may be possible the present consensus of opinion at the Bar.

There have, however, been a few adverse criticisms. A member of the Pennsylvania Bar writes:

"While I do not feel myself competent to criticize said report in any of its recommendations, I feel impelled to say that it appears to me that the ideal prerequisite to registration as a law student would be satisfactory evidence of completion of a full four years' collegiate course or its equivalent, and that the American Bar Association should work unceasingly toward the establishment of such standard."

The editor of *The Legal Intelligencer* of Pennsylvania declares:

"I am not entirely in sympathy with Paragraph VIII, which requires the applicant for registration to pass entrance examinations in the academic department of the State university, etc.; I think this standard is possibly somewhat lower than that required in Pennsylvania, and believe the standard should about correspond to the requirements for admission to the junior class of a college of fair standing."

So also a member of the New York Bar writes:

"This requirement is too low; qualifications should equal those at end of second year in college."

Still another member of the New York Bar asserts:

"The proposition as approved if not sufficient is probably the best that can be obtained at present in this direction. Later on doubtless more severe conditions will be advantageously required."

On the other hand, a time-worn objection to higher educational standards comes from the pen of one of the most respected members of Colorado's senior Bar, in form as follows:

"Rule VIII is altogether wrong. Some of the greatest American lawyers and Judges never enjoyed the advantages of a preliminary education such as Rule VIII requires. Had it been in force in the past these gentlemen would have been disqualified to enter the profession which they aftewards adorned. If a man has, or if during his period of study he is able to acquire the rudiments of a good practical education it should be sufficient. We have no right, legally or morally, to exclude from our profession the poor boy unable to secure the advantages of such an education as Rule VIII requires from beginning, continuing and completing the study of the law, and from subsequent admission to the Bar."

A Maine lawyer writes:

"We have no such requirement as this in Maine and our failure to have such has caused not only serious inconvenience to the Board of Examiners, but has also resulted occasionally, in my opinion, in a person being admitted who is absolutely lacking in the fundamental elements of education."

The Dean of the National University Law School strikes with vigor at the form of the proposition, stating:

"Disapproved. Principally for the reason that if a general standard is to be adopted of preliminary education that purpose is defeated rather than subserved by this clause. State universities have different standards for admission to the different courses, and the universities of different states differ greatly in this particular. It seems to be generally conceded that there should be some examination for admission to the Bar upon non-legal topics, that is to say, upon academic subjects with a view to testing the general education of the applicant. It should suffice that the applicant is able to pass this examination at any time before presenting himself for the law examination. And, to secure uniformity of standards in the academic examinations those topics, a knowledge of which is deemed essential, should be made the basis of the examination in every State. In other words, No. VIII should be elaborated so as to set forth the subject-matter of the standard State examination. It should be open to students at any time without reference to the period when they commenced the study of law, and should be conducted by a committee also appointed by the Court of Appeals of the State, corresponding to the committee of five law examiners. The appointment of a committee in this manner would have the advantage of removing them from school

politics and giving for instance to the State law school no advantage over the other schools in having the entrance requirements controlled by people connected with the State university."

If absolute educational uniformity throughout the country is a *desideratum,* then the position so clearly stated is unanswerable. Your committee, however, suggests that it may be doubted if such uniformity could with advantage be insisted upon at this time. General educational standards in different parts of the country vary. We question if admission to the Bar in any particular state should, at this stage of our development as a people, involve any higher educational test than the Community itself affords through its state university.

A member of the Michigan Board of Bar Examiners writes:

"This section as amended at the 1909 meeting is reasonably satisfactory. In Michigan practically all of the high schools are good enough so that their diploma admits to the State University without examination."

A leading member of the profession in Connecticut writes, concerning proposition VIII:

"So good that I do not see any improvement which would have any practical possibility of adoption."

IX

Proof of moral character shall be required as a prerequisite to registration.

This proposition was approved at the 1909 meeting of the Section (34 A. B. A. Rep. 757).

It has been since almost unanimously approved by those replying to the committee's 1910 request for criticisms.

The chief objection to it comes from one of the most respected members of the Connecticut Bar, who writes:

"I do not think it necessary to require proof of moral character at this stage. This would apply to boys of 17 or 18, whose characters are often unformed, and injustice might be done by depriving a boy

of his right to study law merely because he has not yet come to take a serious view of life. Our test of character before admission to the Bar is as severe as we know how to make it. Each man must file a notice of intention far in advance of the examination, and the names of all candidates from any one county must be approved at a meeting of the Bar of the County after notice to all its members. In this County the Committee of the local Bar carefully considers all cases, and in some instances has made long and searching investigations. The Examining Committee also investigates all cases, when there seems to be any reason to do so."

Another Connecticut lawyer writes us asserting:

"Rule IX should be made more emphatic; it is a common requisite very generally now, if not universally, but it is not enforced rigidly enough."

X

Student candidates for admission to the Bar, in order to be eligible for the examination for admission, shall have studied either in an approved law school or *bona fide* served a regular clerkship in the office of a practising attorney during the required period of preparation.

Note.—Much material of value relating to this proposition will be found in the discussion under Proposition XI, infra.

Proposition X was approved at the 1909 meeting of the Section. For the debate see 34 A. B. A. Rep. 758.

No one of the entire sixteen propositions has received more hearty approval than has this one, judging from the replies received to our 1910 request for criticisms; but three members of the profession writing us, regard it as too stringent, and some consider that the time has come for higher standards than this proposition and proposition XI outline.

A well-known member of the profession in Ohio states:

"It seems to me the rule is inadequate, unless provisions substantially similar to the amended rules of the New York Court of Appeals are included. In this city this matter of a clerkship is a farce. Any young fellow who is permitted to hang round a law office, with or without regularity, is commonly called a clerk for the purpose of

permitting him to qualify, or he is often considered a student in a law office. This evidently serves no good purpose, and I do not believe the rule can be made too strict."

Your commitee called attention to the New York rule as follows when presenting its report in 1909, stating (34 A. B. A. Rep. 771):

"In this connection it is well to note that the New York Court of Appeals' amended rules for admission, which went into effect last year, provide that the candidate must have prepared either in an approved law school or by serving 'a regular clerkship in the office of a practising attorney,' and that as to the clerkship he must produce and file *'an affidavit of the attorney or attorneys with whom such clerkship was served, showing the actual service of such a clerkship, the continuance and end thereof, and that not more than two months' vacation was taken in any one year.'* His own and the attorney's affidavits must also show 'that during the entire period of such clerkship, except during the stated vacation time, the applicant was *actually employed by said attorney as a regular law clerk and student in his law office, and, under his direction and advice, engaged in the practical work of the office during the usual business hours of the day.'*"

A member of the New York Bar considers that the time has now come to demand that every candidate before admission to the Bar shall have completed a law school course in addition to serving one year's clerkship in an office. He says:

"I should favor a proposition requiring a degree from a recognized Law School in addition to a regular clerkship in the office of a practising attorney, and that the Law School should be one in which at least three years' study are required, and the period of clerkship after the attainment of the degree should at least be one year."

On this point one of the members of your committee stated during the 1909 debate (34 A. B. A. Rep. 762):

"I would gladly vote for a rule requiring every man before admission to the Bar to attend a standard law school course, as Judge Danaher suggested to-day; but I doubt if America is yet ready for such a rule."

A member of the Connecticut Board of Bar Examiners states:

"Regular clerkships, within the meaning of the rule, are not common in this State, so far as I know. Where a candidate does not at-

tend the Law School, but prepares in the office of an attorney, we require a certificate from the attorney that the candidate has studied law in his office and under his instruction for the required period. We require, so far as we can, *bona fide* instruction, and expect a man to devote himself to the study of the law, and not merely to do so incidentally while pursuing some other occupation."

We will now quote for the information of the Section the views of the three members of the profession who consider proposition X too stringent.

The Dean of one of the District of Columbia law schools writes:

"Disapproved. Either the examinations should be open to all the world regardless of where and how the preliminary training was acquired, or, if it is to be restricted at all it should be restricted to those who have studied in an approved law school. Personally I am in favor of opening the examinations to every man of twenty-one of good moral character, and then having the examination so exhaustive and thorough and practical that only about one-fourth of those who are now admitted to the Bar, graduates of approved law schools or otherwise, would be able to qualify. My observation is that any tolerably clever young man of twenty-four or twenty-five can get enough law to pass the average Bar examination in one winter's home study and three months of a professional coach. It is here that the shoe pinches, and it is because the Bar examinations are so trifling that all this elaborated system of registration and preliminary examinations, etc., are being urged."

A Justice of the Supreme Court of Louisiana states his position thus:

"No. Examination suffices to show qualifications."

And a member of the Minnesota Board of Bar Examiners declares:

"I cannot approve of this. Some of our best young men are so situated that they must support themselves and others while preparing to practise law. I do not believe we should shut the gate to all who have not fathers able and willing to support them for the three years."

While but three have expressed such views to us, they are undoubtedly held by many, and for the information of the Section, and all interested in the subject, we will quote at length from a memorandum of authorities, English and Amer-

ican, concerning the meaning of the term "regular clerkship," and which will be found in full in 28 A. B. A. Rep. 634-642, first, however, giving one of the introductory paragraphs concerning the practice which has grown up in many parts of America permitting candidates for the Bar, who have neither had a law school course nor served a regular clerkship in an office to take the examinations for admission:

"This thing of admitting such men to examinations for the Bar is a modern American development, an excrescence upon our system, one of the most dangerous imaginable, and one which is destined to strike the roots of its malignant growth to the very vitals of the Bar if not speedily eradicated, for such men have not spent their period of development in the environment of law, and in consequence have lacking that which breathes into them the spirit and the soul of the profession. * * *

"It is easy to comprehend how this system has unwittingly grown up in certain portions of America permeated with the spirit of freedom, ever determined to accord equal rights to all and special privileges to none. No doubt the practice which obtained so long of admitting to the Bar on law school diplomas was at the root of the evil, for the argument then was on its face plausible that if a man who had the time and financial means to attend a law school and reap the advantages which accrued, was admitted to the Bar without any examination, certainly the poor boy who could not afford to attend a law school, but who, urged on by the fire of ambition to better himself, had spent years in conscientious study, ought at least to be permitted to show by an examination whether or not he had acquired sufficient knowledge to practise. A fallacious argument! 'Information,' it has been truly said, 'is not education,' neither will mere theoretical knowledge of law make a lawyer, and it bodes ill for the future of the Bar in those jurisdictions which admit to examinations for admission those who have spent their period of preparation away from the environment and spirit of the law. This thing is a modern American departure from time honored precedent, and with profit we may at this point briefly trace the history of clerkships in law and see how jealously the requirement has been guarded by the Courts from encroachment when the matter has been before them for determination.

HISTORY OF CLERKSHIPS IN LAW

"The statute of 20 Edward I (1292) empowered the Justices to select from every county those best qualified to do service in the Courts as attorneys. As early as the fourteenth century the profession was overcrowded, and in order to prevent its increase the statute of 15 Edward II, c. i. (1322) was enacted, reserving the power of admission

to the Chancellor and the Chief Justice. Notwithstanding this, incompetent men seemed to be successful in reaching the Bar, for by the preamble to the act of 4 Henry IV, c. 18 (1403), there was reference made to the great number of attorneys, 'ignorant of the law and not learned as they were wont to be,' and this act provided that those who were attorneys should be examined by the Justices and that only those who were 'good and virtuous and of good fame' should be received and sworn well and truly to serve in their offices and have their names placed on a Roll. On the other hand, those attorneys who were not good and virtuous and of good fame were to be excluded from the profession, and any found in default were forever after to be prevented from practising. But still the Bar increased, which, was even at that time deemed a great evil, and an act, that of 33 Henry VI,c. 7 (1455), was eventually passed, which, after reciting that the number of attorneys was too great, and that it was their practice 'to stir up suits for their own profit, limited the membership of the Bar in certain counties.

"In 1606 the statute of 3 James I, c. 7, was enacted. It recited that owing to the abuses of sundry attorneys and solicitors in charging their clients with unnecessary fees and other unnecessary demands, the clients had grown to be overburdened and the practice of the just and honest serjeants and counsellors at law much hindered, and that such attorneys and solicitors for their own profit were in the habit of delaying suits to an extraordinary degree; the act provided, therefore, that none should be admitted as attorneys or solicitors except those brought up in the Courts in which they wished to practice, or were otherwise well practiced in the soliciting of causes and who had been found by their dealings to be skillful and honest.

"Apart from the restraining acts of parliament it was the custom of the Courts to admit only a certain number of attorneys annually, and this practice was continued at least until the enactment of 2 George II, c. 23 (1729), which expressly provided that nothing therein should be construed to authorize the admission of any greater number than ancient usage or custom allowed. This limitation of the Bar has its counterpart to-day in the Connecticut regulation, so delightful in its possibilities for our brethren there, authorizing admissions only on vote of the Bar; also in the Pennsylvania Act of Assembly of 1834, re-enacting the provision of the Act of 1722 only permitting the Judges to admit 'a competent number of persons,' and under which the Supreme Court of Pennsylvania has said the Judges 'must necessarily judge of the competent number.' (Brackenridge's Case, 1 S. & R., 187 [1814].) As early as 1654, the Supreme Court at Westminster had provided by rule that no one should be admitted as an attorney unless he had 'practised five years as a solicitor in Court, or had 'served five years as a clerk to some Judge, serjeant, barrister,

'attorney, clerk or other officer of the Court, and who on examina-'tion should be found of good ability, honesty, etc.'

"The statute of 2 George II, *supra*, directed that no one should be admitted as an attorney 'unless such person shall have been 'bound by a contract in writing to serve as a clerk for and during 'the space of five years to an attorney duly and legally sworn and 'admitted,' and that such person 'during the said term of five years 'shall have continued in such service,' and in order to prevent an attorney having more articled clerks than could receive proper training, the act also provided that no attorney should have more than two, and this is the law at the present day in England. Indeed by the articles of clerkship which are still required in England, the preceptor in consideration of the services to be rendered to him, 'doth undertake and promise that he will by the best ways 'and means he may and can and to the utmost of his skill and 'knowledge teach and instruct or cause to be taught and instructed 'the said (the student) in the practice of the profession, which he 'the said (the preceptor) now does or shall at any time hereafter, 'during the said term, use or practise.'

"If the regulations in American jurisdictions now required the preceptor of a student clerk to be bound by some such undertaking and promise, as the rules of admission might properly provide, it would doubtless, in the majority of cases, result in the awakening of a sense of responsibility on the part of the preceptor, with corresponding advantage to the student and ultimately to the profession. Parliament, in order to remove any doubt as to the *bona fides* and intent of the regulations of 2 George II, twenty years later enacted a statute, that of 22 George II, c. 46 (1749) providing that such candidates for admission 'who shall become bound by 'contract in writing to serve any attorney, shall, during the whole 'time and term of service to be specified in such contract, continue and be actually employed by such attorney or his agent in 'the proper business, practice or employment of an attorney.'

"These regulations are the origin of the American statutes and rules of Court requiring clerkship and study in the office of a practising attorney.

DECISIONS *in re* CLERKSHIPS IN LAW

"The Courts, both in this country and in England, whenever the question has been before them, have given a strict construction to the provision that a candidate for admission to the Bar shall have served a *bona fide* regular clerkship of the length and character required.

"In 1798 in *Ex parte* Hill, 7 T. R., 456, a question of clerkship was before the Court of King's Bench on a rule to show cause why Hill should not be stricken off the roll of attorneys as not

having served the five years' clerkship required prior to his admission. The rule was made absolute, Lord Chief Justice Kenyon saying:

" 'The question is whether he (Hill) has complied with the 'directions of the act requiring him to serve the person to whom 'he is bound and to continue in such service for five years? * * * 'It is not enough to say that during that time he occasionally did 'business for Hughes, or attended the Hundred Court, which is 'holden once in three weeks. However hard the case may press 'on this individual, we must not make the law bend to our wishes, 'but must see that there has been such a service as the act requires.'

"Ashhurst, J., remarked:

'It is not fit that we should relax the rule of service required by 'the act, * * * If we break through that rule in one instance I 'do not know what other line can be drawn or where we are to 'stop.'

"And Lawrence, J., also concurring, said:

'The object of the act was to prevent the admission of unfit persons 'to be attorneys, for which purpose it required that they should 'serve the masters to whom they were articled for five years.'

"In 1808 the Supreme Court of New York, at a time when Kent was Chief Justice, held in a case reported 3 Johns 261, that a preceptor's certificate that the applicant 'had regularly pursued the study of the law under his direction and superintendence,' was insufficient, and that the attorney ought to certify that the clerk had served his clerkship regularly in the office of such attorney. Again, a year later, the same Court in A. B.'s application, 4 Johns 191, ruled, per Chief Justice Kent, that the certificate of the preceptor that A. B. had studied in his office (which was at a different place from that in which the attorney resided) under his direction and advice and as his clerk was not sufficient, and that 'the clerk must be in the office under the personal 'direction of the attorney himself, and the establishment of different 'offices in different towns and counties by the same attorney was an 'evasion of the law and an imposition on the Court.'

"In 1814 the Supreme Court of Pennsylvania in Brackenbridge's case (1 S. & R. 187) refused on technical grounds to interfere with the decision of a Court of Common Pleas refusing to permit the examination of the applicant under a rule requiring the service of a regular clerkship within the state for the term of three years with a practising attorney or gentleman of known abilities, the proof in that case being a certificate by one of the Justices of the Supreme Court that the applicant had served a regular clerkship within the state for three years under the said Justice. The opinion of the Court traced the origin of the rule back through the Court's rule of 1792

to the statute of 2 George II, *supra,* and held that while the Justice of the Supreme Court was undoubtedly a gentleman of known abilities, nevertheless his rank was too high for the service under him of such a clerkship as that contemplated by the framers of the rule.

"In 1825, a question arose in the Court of King's Bench, *In re* Taylor, 6 D. & R. 428, as to what would satisfy the requisites of the statutes of 2 and 22 George II, *supra,* as to clerkship. Said Chief Justice Abbott:

'We are asked to allow this gentleman to fill up intervals of 'days, nay, even of hours, in various parts of every year of his clerk-'ship during which he rendered no service to his master and was 'actually bound by the duties of an office under government to devote 'all his time and all his service to the public. This it is impossible 'to allow without violating both the letter and the spirit of the acts 'of Parliament.'

"Three interesting cases from the Court of King's Bench in the matter of clerkships are reported in 10 Jurists (N. S.) 939: *In re* Smith (1843); *In re* Mills (1862) and *In re* Duncan (1864), all of which evidence the intent to construe the requirements strictly, though equitably for the best interests of the profession. In the latter case Chief Justice Cockburn, said:

'Unquestionably the supervision and personal superintendence of 'the master is essential to good service.'

"In 1894, the Supreme Court of New York for the First Department, in a case not officially reported, but cited in Smith's New York Court of Appeals Practice, 5th ed., at p. 155, refused an application for examination for admission to the Bar because the candidate's registration certificate showed that he had entered the office of a practising attorney merely 'as a student at law.' The Court said:

'The certificate was rejected by us because it did not seem to 'comply with the rules of the Court of Appeals. Throughout the 'whole of the rules the serving of a clerkship is spoken of. * * * 'Having in view the reason why the requirement of a practical clerk-'ship was made of even graduates of law schools, it did not seem 'to us that being a mere student in an office was in any way a 'satisfaction of the requirement of the rule. The requirement of 'rule five is certainly a very simple one, and it would seem that 'it could easily be complied with. We have, however, found that 'there exist some persons who make it a business to coach for 'examinations, and who give certificates of attendance as law stu-'dents in their offices, the student not doing a particle of real 'clerical work, and they have given certificates of the kind under 'consideration.'

"In 1899, in a Pennsylvania case, Wilson's Application, 9 Pa. Dist. Rep. 102, a Common Pleas Court for the First Judicial District refused to permit four years of study of law as outlined in the obligatory course to be accepted in lieu of the service of the three years' office clerkship required by the rules.

"And in 1902, the Supreme Court of Pennsylvania, when establishing a State Board of Law Examiners, promulgated a rule whereby the three years' period of preparation after registration, when passed other than in a law school, is required to be spent 'by *bona fide* service of a regular clerkship in the office of a practising attorney' within the state, the words *'bona fide'* having been inserted for the purpose of removing any doubt or ambiguity as to the intent and meaning of the office service required.

"It is well settled by the decisions, English and American, that the term 'service of a regular clerkship' has a clearly defined meaning, and that it can only be complied with by a regular, continuous *bona fide* service during the entire period under the direction of the preceptor and in his law office. In no reported case has the question been more fully or more carefully considered than in the American one of Dunn's Application, 43 N. J. L. 359, argued in 1881 before the New Jersey Supreme Court, a case of such importance that it was reprinted in 1900 in 9 Pa. Dist. Rep. 107. In that case the Court in the opinion filed per Dixon, J., declared:

'Whether an applicant has studied sufficiently is left, by our rules, 'to be determined upon the examination which he must undergo; and 'altogether aside from that question is the inquiry whether he has 'served the necessary clerkship. The substance of this prerequisite 'it is not difficult to perceive. A clerkship to an attorney imports 'the office of assistant to an attorney, an actual occupation in and 'about the attorney's business and under his control. The services are 'to be rendered, not solely or mainly by the study of law books, but 'chiefly by attending to the work of the attorney under his direction. 'The purpose of the rule is that the clerk shall be actually engaged 'in the practice of law under the guidance of his master for the stated 'period, so that by direct contact with an attorney's duties he may 'acquire the skill and facility in the profession which are necessary 'for enabling him to protect and promote independently the interests 'that clients may afterwards commit to him. This is the sole object 'of requiring the clerkship to be served with a practising attorney. 'For the mere study of legal principles, a retired counsellor or a 'professor would be an apter guide.'

"The Court then declared that the applicant and his preceptor both seemed to have misconceived the purport of the rule and said:

'They have regarded study as the equivalent to clerkship. We do not.'"

It is well for us to remember in this connection that in England, at the present time, a man to be entitled to practise as an attorney, must before examinaion prove that he has served a regular clerkship for *five* years.

Furthermore, in Germany, as pointed out to us in 1908 by Judge von Lewinski, of Berlin, in his illuminating paper on the "Education of a German Lawyer" (A. B. A. Reports, XXXIII, pp. 814-827), the candidate for admission to the Bar *after* he has completed his three years' training in the law school, must before examination for admission, spend four years and four months in practical work. He then, if he passes his examination, is admitted to the Bar. The four years and four months according to Judge von Lewinski (*id.*, pp. 822-825), is divided as follows: As assistant to the Judge in one of the smaller county courts, nine months; in the Superior Court, studying civil and criminal proceedings, one year; following this, four months with a state's attorney acquiring knowledge of criminal prosecutions; then a six-months' course in the office of a counsellor at law; after that, one year in studying practice in a county court in a large city and receiving instruction in civil law and procedure from especially qualified Judges, and finally nine months is devoted to a study of the work of the Appellate Court, in all four years and four months *after* the completion of the three-years' law-lecture course. Then, if he wishes to be a Judge or state's attorney, he is compelled to undergo a still further course of training.

One member of your committee calls attention to the fact that in Germany the professors of law seem to recognize that they have a two-fold function, one, the theoretical training of a group of men, who are subsequently to be called to the Bar *after thorough drilling* in practice, the other, the education of a larger group who desire merely theoretical knowledge of the law without expectation of ultimate admission to the Bar.

XI

No student candidate shall be eligible for admission to the Bar until he shall have devoted four years in preparing for call to the Bar, either by the service of a four years' clerkship in an approved law office, or three full years in an approved law school, followed by one year of clerkship in an approved law office; provided, however, that the fourth year may be passed in an approved law school in post-graduate work, including procedure and practice. In the draft for the rules a footnote should be appended to this provision to the effect that in those States in which candidates are eligible for examination for admission after completing only a *two* years' law school course, the one year additional of practical work should be required. This would leave the entire period of preparation *in those States* at only three years.

Note.—Much material of value relating to this proposition will be found in the discussion under Proposition X, *supra*.

This proposition was approved, after debate, at the 1909 meeting of the Section, and for the debate see 34 A. B. A. Rep., pp. 759-764.

The object of the provision embodied in proposition XI is to insure at least one year being devoted to the subject of practice and to differentiate the man who merely wants a general education in the law from the man who desires actually to engage in the practice of the profession.

Dean Irvine of Cornell and a member of our Committee approves the proposed four years for preparation,

> "not so much upon the necessity of an extra year for "training in practice as upon the inadequacy of three years "for covering, in a proper manner, those branches of law "which may fairly be deemed essential to every student."

He further says:

> "I do not think that instruction in pleading or even "in practice should be deferred until the fourth year. I

"believe the law schools should afford such instruction as "a part of the regular course." He adds he fears that the proposition in its present form "would tend to the elimina- "tion of practice courses from the law school's *curricula,* "and that the student would be relegated to an unscientific "and haphazard picking up of practice information in his "fourth year."

In answer to our 1910 request for criticisms we received replies from thirty different states. Over 72% of those replying unqualifiedly approve the proposition in its present form. The remainder criticize particular provisions.

One of the tersest replies is from California, the writer saying:

"In favor of the proposition because of practical difficulties involved by any material change therein."

We think the discussion which follows will emphasize the wisdom of this remark.

The distinguished Dean Rogers of Yale noted his dissent from the proposition because it treated as equivalents time spent in a law office and time spent in a law school; and Chief Justice (now Governor) Baldwin of Connecticut opposed it on the ground that the country was not yet ready for it.

That this important question may be fully before you, we present excerpts from the 1909 debate, as follows (34 A. B. A. Rep. 759-764):

"Henry Wade Rogers, of Connecticut:

"I desire to dissent from this proposition, and I do so because it treats as equivalents time spent in a law office and time spent in a law school. A resolution was passed by the American Bar Association last year requiring students to study law for three years in a law school or four years in an office. I, therefore, move that Proposition 11 be recommitted to the committee for further consideration, in view of the action taken by the American Bar Association last year.

"Franklin M. Danaher, of New York:

"I second that motion.

"Lucien Hugh Alexander, of Pennsylvania:

"I call attention to the fact that the action of the Bar Association last year was the adoption of a recommendation that candidates should study law for three years if graduates of law schools and four years if not graduates of law schools.

The object of the committee in presenting Proposition XI in this form was not at all in opposition to that action, but simply to suggest that in the judgment of the committee there should be considered by this Section the question whether or not there ought to be an additional year of practice, making four years for all men. That does not alter or modify the requirement or resolution referred to that a man shall have studied three years, if a graduate of a law school, and four years, if not.

"Henry Wade Rogers, of Connecticut:

"But it treats the two periods as exactly equivalent to each other, and that is my objection to it.

"Lucien Hugh Alexander, of Pennsylvania:

"I think I voice the sentiment of the committee when I state that in presenting these points for incorporation in the rules, the committee had in mind not necessarily the conditions as they exist today, but the conditions of the future. Judge Danaher, for many years Secretary of the New York State Board of Law Examiners, in addressing us has emphasized the importance of one year's practical training in an office, but he advised cutting off one year of law school study in those jurisdictions where three years is now required. If Judge Danaher's proposition is carried out, a student during his last year must be entirely out of the law school and in an office. The committee does not think it a practicable thing for a man to carry on the work of a standard law school, and at the same time be serving a *bona fide* clerkship in an office. On the other hand, we do not think that the Section ought to do anything that will adversely affect the three-years' *curricula* of law schools of standing today. We believe that a man should have one year of practical work; but we also believe that a man should not have his law school course disorganized in order to secure it, as would be the case if he were to spend but two years in the law school. Between the two horns of the dilemma, between this Scylla and Charybdis, there is but one course, namely, that the candidate must get his one year of practical training after he has completed his law school course. We see, therefore, no way to meet the situation but to require that men who are coming to the Bar shall take four years in those jurisdictions where a man is now permitted to come up for examination after three years in a law school; and in those jurisdictions where only two years in a law school is now required, we say add to that the one more year of practical training.

"Henry Wade Rogers, of Connecticut:

"I am not objecting to the requirement of one year's additional time spent in a law office.

"Simeon E. Baldwin, of Connecticut:

"Is there any utility in our affirming a proposition which we know the country is not prepared for? The American Bar Association, by years of patient effort, has greatly advanced the standard of legal education, and has advanced materially the limit of time which must be given to law school study in order to acquire a degree. We now propose to ask another year of study, and we turn to the German practice as an authority, or to that of England in regard to her attorneys, who are not ordinarily men of what we call a liberal education.

"It seems to me that if the students in a three-year law school course were to utilize their vacations in clerkships and in office work, the end in view would be achieved, and I believe this to be common sense advice for a student who desires to acquire a knowledge of practice. Tell him to enter his name in the office of an attorney in the city where he proposes to practise, and to learn practice during his vacation. We have been told today that the term of study required in a year of law school work runs from thirty-two to thirty-five weeks. That leaves a good many weeks in a year, and two months each year for three years could be well spent by every student as a registered clerk in an office, and if so spent I think that all would be accomplished that could reasonably be asked in the present condition of American society. We are not built as the Germans are, on the theory of life-long preparation. Our institutions are founded on the theory of youth, people are availing themselves of the work of the young, and we want to get men started in the world at an age when they are still young. I sympathize, therefore, with the opposition to the proposition as it now stands.

"Lucien Hugh Alexander, of Pennsylvania:

"Speaking personally, and not for the committee, I would call attention to the fact that the committee, when considering this matter, was not presenting what it believed to be an ideal standard, but rather one which we believe to be practical enough to be adopted in jurisdictions where rules of admission are to be changed. In my own state of Pennsylvania, until within a few years, a student could prepare for call to the state Bar in but one law school, that of the University of Pennsylvania. Later Dickinson Law School was added, but no credit was given to a man who took any of the other great law school courses; after graduation from Harvard or Yale or any other law school, he was compelled to return to Philadelphia and serve either a three-years' clerkship in an office, or else enter the University of Pennsylvania and take his last year there, and then be admitted on his diploma according

to the practice then obtaining. It was with the greatest difficulty that we finally succeeded after years of effort in getting our Courts to recognize attendance in the great law schools of the country outside of our own state as equal to an equivalent period of time spent in an office.

"Speaking again for myself, and not for the committee, I believe that it will be practically impossible in many jurisdictions to secure the adoption of a rule which will require more time in a law office than in a law school. In presenting a draft for standard rules for admission to the Bar, the thought of the committee was that only rules should be approved which would stand some prospect of adoption in the various jurisdictions.

"Again speaking personally, I would gladly vote for a rule requiring every man before admission to the Bar to attend a standard law school course, as Judge Danaher suggested today; but I doubt if America is yet ready for such a rule. I, however, would oppose the adoption of any standard rule which makes the distinction which has been stated, for it would give a false impression; we ought not to indicate that four years in an office is equal to three in a good law school. We know it is not, and by attempting to make it appear that it is we would make it more difficult to secure ultimately the general adoption of a rule requiring every candidate for the Bar to take a standard law school course. A man in order to practise medicine must attend a medical school, and there is no good reason why the bars should be permitted indefinitely to remain down in our profession. We think our suggestion in the form presented complies with the action of the American Bar Association last year.

"Levi Turner, of Maine:

"I am in entire sympathy and accord with what Judge Baldwin has stated. My own experience justifies the wisdom and practicability of the course he suggested. I have sometimes been asked what the ideal course for a law student would be. I myself never had the advantage of a law school training. My reply has always been that a student ought first to have two or three months in a law office, reading some elementary book, in order to familiarize himself with the terminology and nomenclature of the law, so that when he takes his first lecture in the law school he will be able to comprehend it. Then let him spend his vacations in the office of a general practitioner. My observation has been that students who do that are well qualified to take hold of the real activities of the profession when they are admitted to practice. I know whereof I speak, because in the office I left when I went upon the Bench, we had three graduates from Harvard Law School. Two of them had pursued the course I suggest; that is, immediately upon finishing their first year in the law school, they entered the office and took part in the business activities there. Of course, to put a student in a corner of a law office simply as a piece of furniture, not allowing him to participate in the business, is useless, and time thus spent is

valueless to him; but if he is given a share in the work and responsibility of what goes on, my experience is that the knowledge gained during his vacation will fit him to take up the work of his profession with intelligence, skill and reliability.

"Upon a vote, the rule as printed was approved."

We present herewith, criticisms upon the proposition received in answer to our 1910 request for same.

A well-known member of the New York Bar writes:

"Experience through many years at the Bar and in judicial life and some experience as a lecturer in law college, I am satisfied that some discretion should be lodged with the commissioners regarding this period of study prescribed by Proposition XI. To illustrate, in my academic days my class came up to one individual who had then twice failed in his examinations, never having gone beyond the change of signs in algebra, and was at the examination of our class again turned back, failing the third time. It is perfectly apparent that such a student would require four times the period of study to accomplish what the average student would accomplish, and the rule would require a student of mature mind to be harnessed with four years of student life in office or law college as an absolute requisite. It is calculated to discourage the very character of intelligence that we desire to encourage in the success of our profession. Looking upon the rules for admission and seeing that four years of mature manhood must be practically lost in the study before he can reach a standing in the profession tends to drive him to other industries or professions less incumbered, and the profession loses perhaps a brilliant future in the profession. One of the very profound lawyers in the State of New York, in conversation with me relative to the present examinations for admission to the Bar, at the time having reached the highest place in judicial life, and quite familiar with the character of examinations, in speaking of it said: 'If such examinations had been required when I was admitted to the Bar, I would undoubtedly have spent my life following a plow over the lands of Central New York.' While Proposition No. XI is very proper as a general rule, it should be subject to opening upon proper showing. Therefore it seems to me a discretion should be lodged with the commission upon special application with specified evidence of capacity with, if you please, an additional fee for passing upon such application. But with the possibility that the applicant, abundantly satisfying the commission of his competence and fitness for admission, should not be required to pass four years arbitrarily in an office or in a law college."

A member of the profession in the State of Washington expresses his views as follows:

"I am not in favor of admitting candidates to the Bar unless they intend to practise. I believe that any student who desires a law education for theoretical training only should be confined to his law degree, and should not be enrolled as a member of the Bar. Nor do I believe that any law school work has yet been able to take the place of practical experience acquired by service in a law office. I therefore favor three full years' work in an approved law school, followed by one year of clerkship in an approved law office, as the most efficient method of acquiring a practical and working legal education; but I would make the rule less hard and fast by permitting either three years in a law office or two years at school and one year in an office. Such a rule, I am persuaded, would best meet the varying conditions of the entire country."

The Dean of a Trans-Mississippi law school says:

"Objectionable because of the following: After the word 'school' in the fifth line, 'followed by one year of clerkship in an approved law office.' I think this an unnecessary hardship, and the clause requiring a three years' course in a law school to be followed by one year of clerkship in an approved law office should be stricken out. In many states, especially the newer states, there will be practical difficulty in many law school students securing clerkships in approved law offices. Further, it occurs to me that the law school course of study should be so arranged and such place given in the course to moot Court and practice work that the student will be fairly well equipped to enter at once upon the practice without serving a year as clerk. I am satisfied that the practice work of some law schools conducted through the senior year is more advantageous to the student than the practice he will get in an office."

The Dean of one of the smaller Eastern law schools, writes:

"I approve the four years in office work and study, but I would leave the law school at three years. I think Dean Rogers' criticism valid. I would make two groups of subjects for examination as now is done in New York, viz.: Group 1, Substantive Law. Group 2, Evidence and Civil Procedure, and require the student to pass in both groups. This will take care of both branches of the law. Under this scheme the schools can be trusted to take care of *practice,* and no student can neglect it and hope to get into the profession. In any event, I would strike out the words 'including procedure and practice.' The law school man must have that subject before he leaves the school."

A member of the Bar in the State of Minnesota expresses himself thus:

"My criticism upon eleven would be that you would add very little to the up-to-date law school where they have special provision for procedure and practice during one of the three years. You would not accomplish the purpose of requiring every student in an office to have at least two years in a law school, which ought to be required, and I can see how there might be cases where a student in a law school might not be required to take office work, which I think ought to be required. In other words, in putting out a four-year course, a student ought to be required to have both practical and theoretical work. If he is not admitted on his law diploma he ought not to be admitted without work in a law school. The most of the states, or at least a large number of the states, now require dentists and doctors to take work in regularly accredited schools before they can be admitted to practice. There is no reason why the same standard should not be required of lawyers, but the practical work ought to be so as to give them an understanding of the needs of lawyers before they have their certificates of admission."

The following is from a well-known member of the profession in New York:

"I do not regard four years' clerkship as the equivalent of three years in a law school and one year in an office. I desire to emphasize Dean Irvine's remarks concerning instruction in practice, and even to go beyond them. The whole body of the substantive law has been built up on the law of pleading and practice. I do not believe in any law school course that does not found itself on the law of procedure. In my judgment, fully one-third of the required course should be devoted to that subject. A workman who does not know the tools in his tool-box and the uses of each, never makes a good workman. And I think it is unquestionably true that any lawyer who thoroughly undersrtands both law and equity procedure is a pretty thoroughly equipped lawyer. I have never seen any reason to differ from Judge Story's views as summed up in the last section of his book on Equity Pleading, and from my six years' experience as a lecturer on procedure I strongly support Judge Story's view."

The Chief Justice of one of the Western states writes:

"Rule eleven requires one year's clerkship in a law office after the completion of a three years' course in a law school. This seems to me at present not a desirable provision. The work in a law office is a desirable preparation, but it is often of little real

value. Pleading and practice should be taught in the regular three years' law school course, and if properly taught the student will get a better preparation for actual practice from such instruction than from casual experiences in the ordinary law office."

The Dean of a law school in the District of Columbia says:

"Disapproved. Certainly not more than three years altogether should be required as a period of preliminary study to take the Bar examination. If the law schools do not teach the general principles of practice, that is the fault of the law schools. The student should not be penalized by another year's postponement of his getting out into the real world, besides which, anyone who has had a personal experience knows that more practice work can be taught in a law school in one winter than can be picked up by the ordinary law student in a law office in two or three years."

Contra to this, we have the following views from the Chief Justice of a far Western State, who says:

"I approve fully of the requirements of this proposition. It will be difficult in some of our western states, however, to secure the legislation necessary to make the rule effective, even to the extent of adding the extra year of practical work to the two years' law course now required, as suggested in the note. In this state a course of two years of twelve months is now required. Our legislature would yield very reluctantly to any suggestion to extend the time for preparation. The popular idea that the struggling young candidate shall not be kept out of actual practice longer than is absolutely necessary is very wrong."

The Dean of the most important law school in the State of Pennsylvania expresses himself thus:

"In the main I agree with Dean Irvine. Personally I believe that no general announcement should be made until the Bar is ready to say definitely the course of education which students must take. In a short time I think the profession will insist on a three years' law course and a one or two years' apprenticeship corresponding to the hospital training of the medical practitioner."

In New York State, a committee of the New York County Lawyers' Association, of which committee Mr. John R. Dos Passos was chairman, during the last two years has strenuously advocated the amendment of the New York rules so as to require five years of study "of which at least two years shall actually be spent serving a regular clerkship in the office of a practising attorney," "the clerkship to follow the course in a law school or its equivalent in prescribed study."

From a memorandum on this subject presented to the New York Court of Appeals on behalf of the New York County Lawyers' Association, we excerpt the following:

"The effect of this rule is to lengthen the term of apprenticeship from three to five years, and to compel the student to pass the last two years of his course in the office of a practising attorney.

"If this amendment were granted, no student could be admitted until he was 23 years of age. The almost unanimous opinion of the Bar is that this is none too late; that the student is better able to commence his real work at 23 than at 21. * * *

"We beg again to quote from the report of the last named Committee:

'Under the rules as they formerly existed a candidate for admis-'sion to the Bar was obliged to serve a clerkship of some considerable 'length in a reputable office, and to produce proof of honest and con-'tinuous compliance with this provision. Under this practice a can-'didate was obliged, during the prescribed time, to continuously devote 'himself to the law, to the exclusion of any trade or occupation, and 'he thereby was able to acquire some degree of familiarity with the 'history, traditions and atmosphere of the profession he proposed to 'adopt—of all of which, under the existing procedure, they are too 'apt to be lamentably ignorant. Many of those who have appeared 'before us have frankly stated that they have no intention to practise 'law, and apparently sought admission to the Bar largely because of 'the ease with which admission could be obtained.'

"Of one thing we feel reasonably sure—that it is the general opinion of the legal profession everywhere in the United States that the period of legal study should be more than three years, and that law students should not be called to the Bar until they have had actual experience in an office where active legal work is performed. Under the present system the apprentices enter the profession with absolutely no knowledge of practice. It is true that they have hastily gone through the Code of Procedure but their hands and minds have never grappled with actual work. Moreover, they know little or nothing of the manners and methods of professional business—of the goings and comings of office life, and many of them for years after they are admitted are actually helpless to themselves and to lawyers who hire them as clerks. They practically begin to study the real work after they have been admitted—following a sort of post-graduate course at the expense of the lawyers who employ them or of their clients, if they succeed in securing any, and very frequently to the inconvenience of the Courts, where time is spent by the trial or special term Judges in giving lessons to the ignorant practitioner at public cost.

"We find a class of young men seeking admission to the Bar, 'who, whatever can be said of their ability to pass technical examina-'tions, impress us as lacking the kind of moral and intellectual fibre 'essential for the creation of a strong and reputable Bar. The effect 'is already apparent. From the Judges of all the Courts come com-'plaints of the number of lawyers appearing before them who are 'without a sufficient degree of intelligence and skill in the practice 'of law, to properly protect the interests of their clients.' (Committee on Character, *supra.*)

"It can be safely affirmed that the profession of the law is equal in dignity and importance to that of the soldier or sailor. Yet the Cadets at West Point and Annapolis are subjected to a four years' course of study whose rigidity and thoroughness have enabled the United States justly to claim full equality with, and in most instances a superiority over, all other nations in respect to its military and naval officers, and the excellent results upon the graduates from these academies are universally conceded.

"In the matter of Pratt, 13 Howard Practice, p. 1, in an able report of the Examining Board to the Supreme Court of New York, the same recommendation was made:

'All experience has proved that nothing short of a term of thorough 'study and training, and that in the office of a practising attorney, 'will ever make a lawyer. As well might the surgeon become qualified 'to practise his profession away from the subject, the mechanic to 'acquire his art by the abstract study of his trade, or the chemist away 'from his laboratory, as the legal student to become qualified to practise 'by merely reading without practical education.'

"The same view was expressed in England in 1899 by the Examination Committee appointed under authority of Parliament by the Incorporated Law Society, as follows:

" 'The Committee adhere to the opinion so long held by the Coun-'cil, that university education, where practicable, is desirable. * * * 'But, for reasons presently given, they consider that in nearly all cases 'the university teaching must precede the service under articles (*i. e.,* 'the service of a five-years' regular office clerkship). * * * These 'duties occupy him (the clerk) from hour to hour and from day to 'day, during the whole of his day. The master has to certify at the 'end of the service that the clerk has, from the date of his clerkship, 'been diligently employed in the master's professional business, and has 'not been engaged in any other employment. The clerk ought, there-'fore, to be occupied in the actual daily work, with its endless variety 'and examples in the application of principles of law, and in all these 'things under continual criticism and advice from the master or respon-'sible and skilled managers, and it is in this way during the five years' 'service that a knowledge of the principles as well as of the practice of the law and its application to actual business becomes little by little

'fixed in the mind of the clerk, in a manner of which no academic 'teaching could hope to attain. Simultaneously an industrious articled 'clerk ought to read privately, or with the aid of a tutor, out of office 'hours, or at convenient times when he can spare the time, the text 'books and books of practice with increasing grasp as time goes on, 'and as his knowledge becomes enlarged by the actual practical work of 'each day. It is with experience that reading, combined with actual 'practical work, becomes easier and the results more lasting. In this 'way an articled clerk by degrees acquires a knowledge of the principles 'and the practice of the law by reason of the work which he is obliged 'to perform day by day, and which the utmost industry and attention 'could not acquire from theoretical or academic teaching. * * * 'The university diploma ought to stand, and in the present University 'of London, does stand, for a high standard of theoretical knowledge in 'a varied range of subjects and as the result of long study. * * * 'They (The Committee) are of the opinion that the existing examina-'tions of the Incorporated Law Society being conducted by practising 'solicitors, and aimed at testing the knowledge of the student in the 'principles and practice of the law mainly from a practical standpoint, 'form a much better test than would be provided by any university ex-'aminations. If, on the other hand, a university degree, at whatever 'date obtained, entitled its holder to practise the law, the result would 'be that the profession would no longer be restricted to persons duly 'qualified with practical experience and knowledge.'"

"We beg in this connection also to call the attention of this honorable Court to the language of the Committee on Character, appointed by the Appellate Division of the Supreme Court of New York, First Department, for the year 1909:

"'The Committee have been more than ever impressed during the 'past year with the apparent lack of general education and fitness of 'many of the candidates. A very considerable proportion of the candi-'dates are unable by reason of their youth, inexperience and meagre 'education, to satisfy the Committee that they are competent to assume 'the responsibility of practising as attorneys or capable of understanding 'or upholding the ethics of the profession. This is especially true of 'foreigners whose obviously limited knowledge of English would seem 'to be an almost insuperable barrier to an intelligent comprehension of 'the law and of the principles which should govern its practice. Inas-'much as a considerable proportion of this class are obliged by the 'rules of the Court of Appeals to secure a law student's certificate from 'the Regents of the University before taking the law examination, the 'Committee are of opinion that the Regents should raise their require-'ments and insist upon such general attainments as will lay a proper 'foundation for legal education, especially as regards the mastery of the 'English language. At the present time it appears to be possible under 'rules established by the Regents, for a student proficient in foreign

'languages and other subjects to obtain a law student's certificate from 'the Regents without having passed any requirement in English. Your 'Committee are of the opinion that the requirement in English for a 'law student's certificate should be at least as high as that demanded 'for an academic diploma (thirteen counts) and suggest that a recom-'mendation to this effect be made to the Regents of the University.

'Under the rules of the Court now in effect, the Committee on 'Character would not feel themselves authorized to reject a candidate 'for lack of general education or inability to speak and understand 'English, provided he presented the required evidence as to his moral 'character, and it seems to your Committee highly desirable that a 'rule should be adopted directing the Committee to enquire into the 'general fitness of candidates.' "

Dean Kirchwey of the Columbia Law School, a member of the committee, was not able fully to endorse the suggested change, but was of opinion *"that a period of four years of law study, at least one of which should be served in the office of an active practitioner of law, should be required of all candidates alike."* Professor Kirchwey expresses himself on this subject as follows:

"As to the second amendment proposed, I am of the opinion that it is not practicable at the present time to require five years of professional training as a prerequisite for admission to the Bar and that a period of four years of law study, at least one of which should be served in the office of an active practitioner of law, should be required of all candidates alike, whether college graduates or not, instead of the two- and three-year requirement now in force. I have no sympathy with the view that the requirements for admission to the Bar should be so fixed as to enable a young man to appear as an adviser of the Courts at the age of twenty-one and I don't believe that the legal profession, least of all that the Courts, are in sympathy with that view. It proceeds on the singular assumption that the 'right' to practise law exists as an attribute of American citizensship, independently of considerations of fitness for the tremendous responsibilities which attach to that vocation. The logical result of that attitude would be to abolish all tests of fitness and to make a man eligible to practise at the Bar as he becomes eligible to vote upon offering proper evidence of his having reached his majority. I doubt indeed if it is desirable to have any age fixed for beginning the study of law. The requirement should be one of general educational and professional equipment and this should be made so high as to prevent any but men of adequate training and maturity of mind from entering upon the independent practice of the profession. What the profession needs is not an influx of *boys* who have been crammed so as to pass the Bar

examinations, but *men* who are qualified in point of judgment and maturity of mind as well as of learning to carry the responsibilities of the most exacting of the professions.

"The argument for the requirement of a period of clerkship in the office of a practising lawyer seems to me conclusive. Neither the requisite technical knowledge nor the proper professional spirit can, in my opinion, be acquired in any other way, but I am convinced that at the present time not more than a year of service in an office can wisely be exacted. If more were demanded it would inevitably be at the expense of the systematic training in legal principles and the knowledge of law which, under existing conditions, can be obtained only in a good law school. I am sure that I am safe in saying that the training of the law schools has come to be indispensable and that it is only through a combination of this training and that of the law office that a man can derive a proper equipment for the work of the profession. It seems to me also that it would be unfortunate so to emphasize the clerkship requirement as to induce students to reduce the period of law school study below three years. That period has come to be recognized as the standard of legal education in this country and is being adopted as rapidly as possible by every school that is animated by a proper sense of its obligations to the profession and to the community which the profession serves. This is especially true of the State Universities of the West and Middle West as well as of the better schools in the East and South. Under these circumstances it would seem to be the part of wisdom so to frame the Rules as to furnish no temptation to law students to interrupt their professional study before it has been properly rounded out in the law school.

"I venture to suggest, however, that a five-year requirement would be eminently proper in the case of candidates who make their way to the Bar otherwise than through the medium of the law school. I think that anyone who is familiar with the conditions under which the student in a law office pursues his reading, will not be inclined to dispute the statement that a single year in a good law school does more for the education of a man in the rules and principles of law than two or even three years spent in an office. To require five years, therefore, of everyone who has not spent, let us say, at least two years in the study of law in an approved law school, would seem to be only a reasonable and proper discrimination between the two classes of students."

On this same subject, a committee of the Bar Association of the City of New York, of which committee Mr. Francis Lynde Stetson was Chairman, prepared a memorandum for the New York Court of Appeals and recommended an amendment of the rules of admission as follows:

"The provisions for requisite periods of study must be fulfilled by serving a regular clerkship in the office of a practising attorney of the Supreme Court of this State after the age of eighteen years; or after such age by satisfactory attendance upon, and successfully completing, the prescribed course of instruction at an incorporated law school or a law school connected with an incorporated college or university having a law department, organized with competent instructors and professors, in which instruction as hereinafter provided is regularly given; *the entire period of study of students to be not less than four years, of which at least one year must be spent in the office of a practising attorney after successful completion of the law school course, the aggregate combined periods of such clerkship and such law school attendance being not less than four years.*"

We close the presentation of the discussion on proposition XI with the words of Mr. Edward S. Cox-Sinclair, of London, in his paper in 1910 before the Section, on "Requirements for Admission to the Bar in Great Britain and Her Possessions and On the Continent of Europe—A General Survey" (35 A. B. A. Rep. 809-828). He says:

"It will be seen that although the period and type of practical training varies in the different countries under review, yet in each of these systems a term of practical work, even if not obligatory is coming to be regarded as an essential preliminary. Practical training reaches its highest point in such countries as Germany and Belgium, where in effect there is, as with you, a fusion of the two branches of the profession. In England (and in other countries such as France and Italy) where there is a separation between the branches, practical training in the office of an experienced advocate is so common as to almost afford a rule. *The tendency everywhere is in the direction of imposing a period of actual practical work, and where such an obligation already exists of making that period longer and its methods more stringent.* It is in fact becoming everywhere recognized that the great interests entrusted to lawyers should not be risked in the hands of amateurs or left to the chance of casual capacity."

XII

Candidates for admission shall present themselves prepared for examination in the following subjects: Constitutional law, including the constitutions of the United States and . . . . (the candidate's State), equity, the law of real and personal property, evidence, decedents' estates, landlord and tenant, mortgages, contracts, partnership, corporations, crimes, torts, agency, sales, negotiable instruments, domestic relations, common law pleading and practice, federal and State practice, conflict of law, professional ethics, the federal statutes relating to the judiciary and to bankruptcy, and the development in . . . . (the candidate's State) of the principles of the law, as exemplified by the decisions of its highest appellate Court and by statutory enactments.

This proposition after amendment was approved in this form at the 1909 meeting of the Section. For the debate, see 34 A. B. A. Rep. 764-765.

The replies to our 1910 request for criticisms indicate that the proposition in its present form has received almost unanimous approval, except that a few suggestions as to amendments have been made. Most of these we will quote for your information, but before doing so call your attention to the following remarks by a member of the New York Bar:

"This proposition as approved by the Section is doubtless suitable and sufficient. It becomes ludicrous to suppose that a young man can justly qualify under it at a less expenditure of time than three years in a law school, and one year in a law office."

The Dean of one of the law schools in the District of Columbia writes:

"Approved, with the suggestion that the examination include practical exercises in pleading, drawing of important papers and such other work as might be done by an attorney without the assistance of a library."

The distinguished Chief Justice of the Supreme Court of Iowa, objects to the requirement of Common Law Pleading. He says:

"Rule twelve requires common law pleading as one of the subjects for examination. This it seems to me is futile. In the Code states a much better course of study in pleading and practice than that afforded by the study of the common law system may be given. Such a course would necessarily involve the principles of common law pleading and practice, but not its study as a distinct system."

So also a member of the Minnesota Board of Bar Examiners, who declares:

"I would not require 'common law pleading,' in the Code states, nor 'federal practice' nor 'bankruptcy.' The newly admitted attorney does not get into this class of work and we ought not to require of him that which he will not be able to use until he is established in business and has shown ability to undertake larger jobs."

The Chief Justice of Wyoming writes:

"I would favor striking from this proposition the words 'the federal statutes relating to the judiciary and to bankruptcy.' It seems to me also that the remainder of the proposition following the words above quoted would require in larger states a more extended study of the appellate decisions than should be ordinarily required of a candidate for examination."

An exception to one provision is taken by a member of the Illinois Board of Bar Examiners, who expresses himself as follows:

"Approve as amended; except that the last clause should, I think, read 'and the developments in..... (the candidate's state) of the *fundamental* principles of the law as exemplified by the decisions of its highest Appellate Court and by *important* statutory enactments.' My judgment is that a well-equipped candidate should have some knowledge of important or far-reaching statutory enactments in the State in which he applies to be admitted; but I always refrain from asking questions which require or contemplate ability on the part of a candidate to answer as to matters founded on statutory law of a relatively obscure or unimportant character."

A former president of the Connecticut Bar Association and a member of the State Board of Bar Examiners says:

"I approve of all but the last clause. I think it is asking too much to expect a candidate to familiarize himself with the law of his state

as evidenced by the decisions of its highest Courts. We require some knowledge of the statutes, and have specified certain portions which shall be read. They relate particularly to the Statutes of Frauds and of Limitations; matters of conveyancing, wills, domestic relations, etc."

This provision was adapted from the system in vogue in the State of Pennsylvania, and in that state in order to prevent the student candidates from being overwhelmed by the requirement, the State Board furnishes a list of the leading Pennsylvania cases with which the candidate for admission will be expected to familiarize himself. Thus qualified, the requirement is said to have many advantages.

A member of the faculty of the Syracuse College of Law writes:

"I think I would omit this entire rule. As it stands the presumption is that the student would not be prepared in any subject not named; without the rule the student must be prepared to pass examination upon the *whole body* of law. If the subjects must be named I would insert Trusts, Wills, Bailments, Suretyship, and I would strike out 'Constitutional Law,' 'Federal Practice' and 'the Federal Statutes relating to the Judiciary.' Good schools teach Constitutional Law, but not exhaustively. To give more time to it is not good economy in my opinion. Few lawyers have to deal with the Constitution. If common law procedure is taught, there is no need of *Federal procedure* as a separate course. What I have said applies to a law office student as well as to a law school student."

The following comments are made by a member of the New York Bar:

"With regard to point XII, allow me to point out two most serious omissions. (*a*) The subject of equity pleading and practice is not mentioned. Certainly no candidate can have any competent knowledge of equity without some definite knowledge of equity procedure. I regard it of the highest importance to specify that particular subject, which is the necessary foundation of any true knowledge of equity. (*b*) A further omission from this section, which I regard as very serious from two points of view, is the subject of the obligations of trustees of all kinds. Probably the knowledge of no branch of the law tends to better professional standards than the knowledge of the duties and obligations of trustees. So far as my experience has gone, a great deal of the dishonorable conduct of low grade lawyers has proceeded from sheer ignorance of the obligations of trustees; and the study of that branch of law is of the greatest importance, not only to the intellectual

equipment of the candidate, but also to his moral equipment for the position of barrister or even solicitor. I would therefore urge strongly the addition to Section 12 of the two subjects, Equity Procedure and Obligations and Disabilities of Trustees."

We append a brief quotation, though not embodied in a communication to your committee, from the revered Judge Dillon:

"I insist, for I believe it to be true, that the stereotyped course of legal instruction in this country is defective, not so much for what it contains *as for what it omits.* It is defective in that no adequate provision is made for specific instruction in historical and comparative jurisprudence, and in the literature, science and philosophy of the law—in what may, perhaps, be compendiously expressed as general jurisprudence."

Concerning the general advance throughout the world of educational requirements in the matter of admission to the Bar, we quote from the paper of Mr. Edward S. Cox-Sinclair, of London, before the Section in 1910 on "Requirements for Admission to the Bar in Great Britain and Her Possessions and on the Continent of Europe—A General Survey" (35 A. B. A. Rep. 809-828):

"*A wide range of proficiency in legal studies.*—Everywhere the range is being extended, the extent of grasp of legal principles intensified, and the tests of acquisition made more severe. * * *

"In fine, it would appear that throughout the civilized world, advocates are regarded with increasing insistence as men who should be fully equipped for a great public service, of approved integrity, of a good general education, of thorough legal attainments, and of substantial practical experience. Whatever may be the normal age standard (and it is generally 21) it will in the future, in practice, come to be fixed at a point some years later."

It is appropriate to close the discussion of proposition XII with the words of the beloved and lamented David J. Brewer spoken before our American Bar Association sixteen years ago, and within the first decade of his elevation to the Supreme Court of the United States (18 A. B. A. Rep. 441):

"And so I come to the thought which I wish to impress upon you; and that is, if our profession is to maintain its pre-eminence, if it is going to continue the great profession, that which leads to and directs the movements of society, a larger course of preparatory study must be

required. A better education is the great need and the most important reform * * * But why is a higher education today the especial need of the profession? Because first, the law is a more intricate and difficult science than heretofore. The very complexities of our civilization and the multiform direction of human enterprise have not only increased the number but have also given greater variety to the rules controlling business transactions. He who would become qualified to counsel and guide must therefore have larger legal lore, and that is only obtained by a more extended study and training."

XIII

Names of all candidates for admission should be published by the board for three days in succession, at least ten days before the examination, in a newspaper of general circulation throughout the State, and for four weeks in a law periodical, should there be one within the State jurisdiction. A similar publication should be made of the names of the candidates passed at the examination and at least ten days before the State Board's certificates are issued to the candidates.

This proposition was approved at the 1909 meeting of the Section (34 A. B. A. Rep. 765).

The responses to our 1910 request for criticisms almost unanimously and unqualifiedly endorse the proposition. However, it is vigorously objected to by a member of the Illinois Board of Bar Examiners, who writes:

"Of this section I do not approve. The facilities of a State Board of Examiners for ascertaining the moral fitness of candidates must vary very widely in the different states: and in the larger states, if not in all states, I feel confident that publication 'in a newspaper of general circulation' etc., and in 'a law periodical' would be substantially useless. Of course, it may be said that the adoption of such a section need not and should not preclude other and further effort on the part of the Board; but compliance with such a proposition as to publication is in my judgment more likely to relax the vigilance of the Board than it is to yield any results—or open up sources of information. It has been my practice here, as to candidates from Chicago, to cause the attorney for the Grievance Committee of the Chicago Bar

Association carefully to go over all the applications for certificates of good moral character—and to consider also the professional reputation of the sponsors appearing in Court for such candidates. Then if there is any question, I take the matter up personally with such attorney, and together we investigate into the standing both of candidates and of their sponsors. I feel that the best way of getting at the moral fitness of candidates is (*a*) to require a certificate of good moral character from some court of record, upon a showing similar to that contemplated in 3; and (*b*) for State Boards to take such means as may be available in the several states for checking up the work of the courts in issuing certificates of moral character."

It is also objected to by a member of the New York Bar, who says:

"Proposition No. XIII should in my judgment be entirely omitted. If there is anyone enough interested in the prevention of the admission of any student of the profession whose moral character or integrity would not stand the test they would lodge with the commission objections quite as certainly without this publication clause as they would with it. It seems to me a sort of contribution to the newspapers and law periodicals quite inappropriate considering the high purpose of our profession.

"Generally, let me say the greatest evil I see threatening our profession comes from the admission to its Bar of a class of men who never contemplate the real practice of the profession but use their prerogative as a practitioner under a mistaken idea of the dignity of the profession to seek an opportunity to take advantage of the less well-posted citizens in the preparation of contracts and dealings between individuals as well as between other business organizations like corporations, and if some rule could be formulated which would protect the profession against this board of vampires who care nothing for the profession and its dignity, but use its opportunities for misappliance of the real purpose of attorneys and counsellors, it would be well."

A more appreciative expression of opinion concerning the proposition under discussion comes from a member of the Bar of Virginia, who declares:

"I especially like Rules VII and XIII, particularly the latter. It would be a great protection to the Bar to print the names of candidates *before* examination, as you suggest. Disbarment is a scare-crow in our country; therefore, the unworthy candidate should be cut off in the beginning. I have been practising law actively since June 1st, 1877, and have never known but one man to be disbarred."

Your committee reports that the preliminary advertisement referred to in the suggested system has had a long actual trial in Pennsylvania, having been in use in Philadelphia for more than a quarter of a century and been a part of the Pennsylvania State system since the establishment of the State Board of Bar Examiners nearly a decade ago, and that the results are declared to have been most satisfactory to all concerned, and in no sense a hardship to the candidates.

XIV

From the examination fees received the members of the State Board shall receive such compensation as the highest appellate Court of the State may from time to time by order direct.

This proposition was approved by the Section at the 1909 meeting (34 A. B. A. Rep. 765).

Of the replies received to our circular requesting suggestions and criticisms, more than 85% gave unqualified approval to the proposition in its present form. A sample of the objections made to it is appended.

The secretary of the Minnesota Board of Bar Examiners writes:

"I think compensation should be paid by the state and all fees be turned over to the state. The practice in this state is in accordance with the proposition except that the maximum compensation is fixed by statute."

A member of the Bar of Maine declares:

"I believe that the compensation might be directed by the State Auditor rather than by the highest Appellate Court. I do not think it wise to burden that Court with such details."

A prominent member of the New York Bar expresses himself thus:

"Disapproved. I think that the compensation of the State Board should be a state charge, regardless of the amount of examination fees received. An examination fee and a fee for passing upon credentials

is, of course, proper; but such fee should go into the state treasury, and the compensation of the examiner should not be made dependent upon the size of the fund thus received."

It is suggested that matters of detail, in fact all matters, so far as possible, which relate to admission to the Bar, should be kept free from legislative interference. In Pennsylvania an earnest effort has been made to keep all such matters within the control of the Courts and it has so far been successful; indeed the State Board of Bar Examiners was established as the result of a memorial to the highest Appellate Court by the State Bar Association and without the intervention of the legislature, and the Court is now exercising direct control over the rules of admission and all matters of detail, such as the fees to be paid by the candidates, the compensation to the assistant examiners, etc., etc.

XV

The fee for examination for admission shall be $25, and for passing upon registration credentials in the matter of general educational qualifications, $5.

This proposition was disapproved at the 1909 meeting of the Section on the ground that this was a matter of detail which had better be left wholly to the discretion of the authorities in the various state jurisdictions. For the debate thereon, see 34 A. B. A. Rep. 765-766.

A majority of those replying to our 1910 request for criticisms are against the proposition as stated above, about 57% being opposed to it.

The objections generally advanced are clearly summed up by a well-known member of the New Hampshire Bar, who says:

"I should prefer omitting. Fees will properly vary according to time and locality, and each jurisdiction may fix its own standard to suit prevailing opinion."

A member of the Bar of New York writes:

"Disapproved. A charge that would be proper in New York State, for instance, would hardly be proper in a state like North Carolina or Florida. The amount of the fee, it seems to me, should be left to each state to determine for itself."

The chairman of the Rhode Island Board of Bar Examiners declares:

"Am of the opinion that a fee of at least $25 should be paid which would seem from the standpoint of the Bar Examiners of this State reasonably adequate. The Board in this State are only allowed a charge of $10 for first examinations; subsequent examinations upon failure in the first $5. Out of these sums are paid expenses of printing, etc."

A well-known Ohio lawyer thus expresses himself:

"Whatever is done with regard to this rule, it seems to me that one thing should be kept in mind, and that is that opportunity for a professional career should be as nearly as possible open to every young man of ambition and determination, and that the least possible money obstacle should be placed in his way. Make your qualification for registration at the beginning as severe as you wish, or as good sense dictates is desirable, make your final examination rigid but fair, and above all, look to the moral qualification of the candidate, even to the extent perhaps of a special inquiry in each case, but don't impede the progress of any man by making the examination fee or any other fee larger than is necessary to cover the cost of doing the work right. We look into a man's moral character when he applies for membership in a lodge, for purposes of business credit, and even in making a loan on real estate, and why we shouldn't take elaborate precaution in this regard in the case of candidates for the Bar, I cannot understand. The State could afford to pay out money for investigations much better than its citizens can afford to have 'crooked' lawyers. This is certainly a case in which an ounce of prevention is worth many pounds of cure."

It is interesting in this connection to observe that in England a candidate for admission as a solicitor must affix an £80 stamp to his preliminary examination certificate before he may be registered as a student.

XVI

The State Board shall consist of five members of the Bar, no one of whom shall receive student candidates in his office in preparation for call to the Bar, or be connected with the faculty or governing body of any law school presenting candidates for admission.

This proposition was approved in 1909 by the Section. For the debate, see 34 A. B. A. Rep. 766-767.

Of those replying to our 1910 request for criticisms, about 85% approve the proposition in the form stated. The objections stated are principally to the number of members of the Board, some being of the opinion it should be larger, others smaller. In presenting this matter to the attention of the Section in 1909 the chairman of your committee called attention to the following facts:

"In some states there are as many as ten members. In Ohio there are ten. In Maryland, three; in New York, three; but in most, five. The committee thought that five was a common basis. Of course, any state desiring to do so may make the number fifteen or three, or any other number it pleases."

It is significant that in New York, the most populous state and one having the largest number of candidates, the Board consists of but three members. In one of the smaller states, Connecticut, there is a board of fifteen. Hon. Franklin M. Danaher, who has been Secretary and Treasurer of the New York Board since its formation some fifteen to twenty years ago, and whose experience as a Bar examiner is unequaled, was asked some years ago to express his views upon the subject of the best number with which to constitute a State Board of Bar Examiners, and he expressed himself so illuminatingly that the major portion of his communication is incorporated as follows:

"Logically a perfect board of Bar Examiners is composed of one person, for there we have—what is absolutely to be desired—a complete uniformity in all things—in the character and quality of the question

papers and in the judgment thereon as to the capacity of the applicants to practise law. The further removed we become from the unit the greater the diversity of thought and of judgment, and greater the differences in opinion as to the proper standard of education and character required for admission to the Bar. A difference essentially necessary in the practical administration of the trust, however, and one to be sought after within bounds—for some examiners there should be, who rising from the ranks, have sympathy and knowledge of conditions surrounding those coming to the Bar from the public schools and the self-educated as well as those, who coming to the Bar sustained by wealth, have had the benefit of university and law school training. The board should be composed of practical men who will seek to raise the standard of the profession by degrees, and by encouraging those who are struggling under adverse circumstances of study, and who are not theorists who believe that those only are of the elect who are of the schools. Therefore a board of more than one is essential; there should be on it men of different views, of dissimilar education and of varying surroundings, yet of experience enough in life and of a judicial temperament that will recognize the right in others, and will harmonize in essentials and agree upon details. The greater the number of the board, the more difficult it will be to procure this necessary condition of uniformity recognizing all the problems involved, and therefore the smallest number, who can handle the work and who will be in this judicial state of mind is the best.

"If three men can do the work, three is a better board than five, but as it will take three men longer to do the work their compensation should be fixed according to the fact, and they should expect and be expected to devote their time to the work, when required, as a public duty prior to all other engagements.

"We have three examiners in New York and according to the manner of our profession, each is strenuous, but we harmonize; how it would be with five, we know not. Five is not a large number and would do, but three can work together with less friction and if properly diversified as above set forth and composed of men who love their work for the good they are accomplishing for the profession and the public, is amply sufficient for all purposes.

"I cannot quite determine from the pamphlet enclosed whether you intend to recommend a board consisting of three or five examiners, but in either event, if the administrative branch of the board is properly constituted and managed, you will find that it will take less time than you imagine. We have so systematized in this state that the entire administrative work falls upon myself as Secretary and Treasurer. All the minutiæ and detail of passing upon the preliminary conditions and the conformity of the applications to the rules, and the qualifications for admission *to the examination* are passed upon by the administrative officer without calling the board together.

"You will find that that will be quite essential in order to induce the men of great standing in the profession to assume the duties of a Bar Examiner, but that necessitates an absolutely fearless and unapproachable man, who is a strict constructionist, and who is not afraid of his job; who can withstand pressure (of which there will be much), and who is for the right and the law every time regardless of consequences. Pardon me—that reads very odd—that's not I—'tis your fellow.

"Such a man to be compensated out of the fees, in whom the board has absolute confidence, will cut the labor of the rest fifty per cent."

Two or three members of the Bar have expressed disapproval concerning the proposal that a member of the Board should not be connected with the faculty or governing body of any law school presenting candidates for admission.

A member of the Illinois Board of Bar Examiners, for example, writes:

"As to the remainder of 16 I think it should read: 'No one of whom shall be connected with the faculty or governing body of any law school presenting candidates for admission; or shall receive student candidates in his office who shall rely upon the certificate of any one in such office in their preparation for call to the Bar.' Several of the young men in my office have been candidates for the Bar—they attending law schools, and relying on their law schools for their certificates as to eligibility for examination. Of course, I take no part in marking their papers; but it seems to me an unnecessary hardship upon a law examiner—and in this State it is generally the custom to appoint examiners who are in active practice—to say that they can have no law clerks except such as do not propose to enter the Bar; or are willing to allow all the time they spend in the office of an examiner (though at the same time they diligently study under their law school preceptors) to count for nothing in the period necessarily spent in preparation."

So also a member of the Ohio Bar expresses himself on this point as follows:

"It seems to me the first part of the rule is good. None of the State Board of Examiners ought to have student candidates in their office, and yet probably all of them are men who could be trusted in such matters; but it seems to me the last part of the rule may work out very badly. Some of the best law offices in this city could not receive clerks who were desiring to use the fact of their clerkship for the purpose of entering their profession, for instance, the office of Mr. Lawrence Maxwell of your Committee. This would mean that

these young men would go into inferior offices, perhaps in many cases where the moral tone was distinctly lower, and this you do not want. I believe the very remote danger you have sought to avoid is of no consequence, in comparison with the great wrong you would do the most ambitious and worthy class of young men by forcing upon them an inferior professional environment."

On the other hand, a member of the Bar in the state of Washington declares:

"While I think the other provisions of this proposition are very important, still a man of attainments sufficient to be on such a committee will undoubtedly follow the practice laid down by Mr. Bailey in the debate on this point."

The views referred to, and expressed in the 1909 debate by Mr. Hollis R. Bailey of our committee, and who is also the Chairman of the Massachusetts State Board of Bar Examiners, are as follows:

"Upon one occasion I had a student in my office, and one of my colleagues on the board had a student in his, and they both expected to be admitted by reason of their connection with us. However, we found the practice did not work well, and by an unwritten law we have declared that it shall not exist in the future."

And concerning this same point the Secretary of the Minnesota State Bar Association asserts:

"I do not think a member should receive a student candidate because the other applicants feel afraid some favoritism may be shown such candidate."

It but remains to report that in conformity to the action of the Section at its last meeting, we have arranged to transmit this report to the members of the American Bar Association, to members of the State Boards of Bar Examiners, to the Deans of all American Law Schools, etc., coupled with a request for further criticisms and suggestions in the light of the additional information embodied in the report.

While there seems to be an overwhelming majority in favor of the more important points, nevertheless the diversified views expressed serve to emphasize the wisdom of a nation-wide discussion of the fundamental propositions, and this should eventually result in substantial unanimity of professional opinion.

At the meeting of the Section this year, should time permit, we trust that some or all of these propositions may be further debated, and that your committee will be in a position to present a final report next year.

All of which is respectfully submitted.

HOLLIS R. BAILEY, Massachusetts,
WESLEY W. HYDE, Michigan,
HENRY H. INGERSOLL, Tennessee,
FRANK IRVINE, New York,
LAWRENCE MAXWELL, Ohio,
GEORGE W WALL, Illinois,
LUCIEN HUGH ALEXANDER, Pennsylvania,
Chairman

AUGUST 30, 1911.